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Supreme Court of the United States

OCTOBER TERM, 1931.

~~1930 Term No. 711~~

1931 Term No. 15

IOWA-DES MOINES NATIONAL BANK,
Petitioner,

vs.

E. R. BENNETT, Chairman of the Board of Supervisors of Polk County, Iowa, et al., *Respondents.*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA.

BRIEF OF PETITIONER.

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OCTOBER TERM, 1930.

No. 711

IOWA-DES MOINES NATIONAL BANK,
Petitioner,

vs.

J. M. STEWART, *et al., Respondents.*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA.

BRIEF OF PETITIONER.

THE OPINION OF THE COURT BELOW

The opinion of the Supreme Court of Iowa was by a divided court and was rendered on September 26, 1930, and the majority opinion appears in the printed record at page 1340; the dissenting opinion at page 1358. The case has not been officially reported, but appears in 232 Northwestern Reporter, 445.

On December 8, 1930, application was made to Justice Butler of this Court for an order extending the time for filing petition for Writ of Certiorari, and on the same day an order was entered extending such time for 60 days from that date. The petition was duly filed within the time thus allowed and the Writ was granted on March 16th, 1931.

STATEMENT OF THE CASE.

THE ISSUES.

The petitioner, a national bank, commenced this action in mandamus in the district court of Polk County, Iowa, seeking a writ commanding the respondents in their respective capacities as members of the Board of Supervisors and County Auditor and County Treasurer of said County (proper substitution of successors in office during the pendency of the action having been made) to refund to petitioner certain taxes and penalties thereon exacted of petitioner by the taxing officers of the County in the years 1919 to 1922 inclusive. The form of the action is one authorized by the Statutes of Iowa in force at the time and now included in the Code of Iowa, 1927, as Section 7235.

The basis of the action was:

First, that the shares of stock of petitioner were subjected to taxation in the years referred to at rates from five to seven times greater than were imposed upon other moneyed capital in the hands of individual citizens in the same taxing district for the same taxing years, thus violating the provisions of Section 5219 of the Revised Statutes of the United States.

Second, that the taxing officials of the State of Iowa, County of Polk and City of Des Moines, intentionally, habitually, systematically, and arbitrarily in each of the years 1919 to 1922, inclusive, imposed taxes upon large amounts of moneyed capital employed in competition with petitioner at rates grossly discriminatory, as compared with the rates and taxes imposed upon shares of stock of petitioner, thereby not only infringing the provisions of Section 5219 of the Revised Statutes of the United States, but as well the provisions of the Fourteenth Amendment to the Constitution of the United States, which provides that no state shall deny

to any person within its jurisdiction the equal protection of the law.

Third, that by the statutes of the State of Iowa it was expressly provided that shares of stock of national, state, and savings banks and trust companies, and "other moneyed capital within the meaning of Section 5219 of the Revised Statutes of the United States," should be subjected to taxation at a rate equaling the consolidated levy, compiled under the laws of Iowa after a determination of the needs of each taxing district of the state, applied to one-fifth (1/5) of the actual valuation of such shares of stock. Such statutes also expressly provided that moneys and credits, not including shares of stock in national, state, and savings banks and trust companies, and other moneyed capital within the meaning of Section 5219 of the Revised Statutes of the United States, should be taxed at a rate of five mills on the dollar of actual valuation, but notwithstanding the provisions of said statute, the taxing officials charged with the administration of such laws, or some of them, habitually, intentionally, systematically, and arbitrarily subjected the shares of stock of petitioner to taxation at the consolidated levy rate in each of the years 1919 to 1922, inclusive, and at the same times subjected large amounts of other moneyed capital within the meaning of Section 5219 of the Revised Statutes of the United States to taxation at but five mills upon the dollar of actual valuation, thereby subjecting the shares of stock of petitioner to taxation in said years at a rate from five to seven times that imposed upon such other moneyed capital.

That the county treasurer of Polk County, Iowa, the collecting agent of taxes for the State of Iowa and all of its political subdivisions, demanded of the petitioner that it pay taxes upon its shares at the said consolidated levy rate, together with interest and penalties thereon, and threatened to enforce collection of said taxes, interest, and penalties by seizure and sale of plaintiff's property; that in order to pre-

vent the sale of its property and the accumulation of penalties, the petitioner, on November 30, 1923, under written protest, paid to the said treasurer the following amounts, to-wit:

Year.	For taxes.	For penalties.
1919	$55,807.62	$25,113.43
1920	64,053.64	24,340.38
1921	67,751.68	17,615.44
1922	61,341.68	4,907.33

Fourth, that in a suit instituted in the United States District Court for the Southern District of Iowa by the Des Moines National Bank, a corporation organized under the national banking laws of the United States, against the county treasurer of Polk County, Iowa, a judgment and decree was rendered enjoining the collection of taxes against the shares of stock of said Des Moines National Bank at a greater rate than five mills on the dollar of actual valuation for the years 1919 to 1922, inclusive, on account of the unconstitutional administration of the statutes of the State of Iowa by the taxing officers of the City of Des Moines and of Polk County, Iowa, and because of the violation of the restrictions upon the power to tax the shares of stock of the said Des Moines National Bank, contained in Section 5219 of the Revised Statutes of the United States. That the said county treasurer appealed from said judgment and decree. That the Board of Supervisors and the State of Iowa, by the Attorney General, and the City of Des Moines, by its corporation counsel, all appeared in said cause upon its trial in the district court, and in the appeal therefrom to the Circuit Court of Appeals of the United States for the Eighth Circuit, and participated in the presentation of the defense to said action, and bore a part of the expense of such defense. That the judgment and decree of said District Court of the United States was affirmed by the Circuit Court of Appeals, and no review thereof was sought in this Court, so that said judgment became final. That under and pursuant to said judgment, and because of

the unconstitutional and unlawful acts of the taxing officials of the same taxing district, for the same years involved in this cause as determined in said action, the shares of stock of said Des Moines National Bank were subjected to taxation at only five mills on the dollar. It was alleged that such adjudication was binding upon the respondents.

Respondents, by way of answer in said action, admitted that levies were made upon the shares of petitioner substantially as alleged, but pleaded other defenses which may be summarized as follows:

1. A denial of facts not admitted.

2. That the money paid by the petitioner in each of the years in controversy had been distributed to the various political subdivisions entitled thereto, and respondents had no money with which to make refund to petitioner if the court were to so decree.

3. The statute of limitations.

4. Laches.

5. That petitioner had a plain, speedy, and adequate remedy at law.

6. That the remedy of petitioner, if any, is by appeal from the action of the board of review.

7. The petitioner is not entitled to maintain an action in mandamus.

8. That petitioner may not recover because of a violation of the taxing statutes of Iowa by the taxing officers.

9. That the petitioner does not come into court with clean hands, in that during the years in controversy the plaintiff, through its officers and agents, assisted and aided other taxpayers in evading taxation in Polk County, Iowa, and elsewhere.

10. That petitioner may not maintain an action to procure refunds of taxes upon its shares of stock, even though paid by it, because it is not the proper party to maintain such action.

11. That the district court was without jurisdiction to grant the relief prayed, for it affirmatively appeared, that, after the institution of the action, the Board of Supervisors had denied the claim, and that such action constituted a judicial determination and finding, which cannot be collaterally attacked in a mandamus action, and that petitioner's remedy, if any, was by certiorari and not by mandamus.

12. That there was no adjudication in the action in the United States Courts, except an adjudication that the county treasurer should be enjoined from collecting certain taxes upon the shares of the Des Moines National Bank, and that the same was in no way binding upon the respondents.

Upon the trial evidence in great detail was adduced, from which the following may be discerned.

The Taxation of Bank Capital.

In January of each year petitioner made to the city assessor of the City of Des Moines, a statement as required by Section 1322, Code of 1897 and 1322-1a Code Supplement 1913. A typical statement is reproduced at record 1021. This statement disclosed the amount of the capital, surplus and undivided earnings of petitioner, and the book value of its real estate. In each year the city assessor made one assessment in a lump sum to the stockholders of petitioner for all its shares and entered the same under the head "corporation stock" on form No. 1 of the assessment rolls. The form used in making such assessments is shown by Exhibit No. 1449 reproduced at Record 1023. The City Council of each city is by statute constituted a local Board of Review to adjust the assessments and supervise the work of the assessor. The City Council of Des Moines sitting as a Board of Review adjourned *sine die* on April 30, 1919 for that year; on May 1, 1920 for that year; on April 30, 1921 for that year; and on May 6, 1922 for that year. See Record 581-582.

After the Board of Review had met and adjourned, the assessments upon petitioner's shares were copied into books designated as Assessor's District Books as "corporation stock" and certified by the city assessor to the County Auditor in that form. A typical page of the assessor's district books is reproduced at Record 1025. The duty of compiling the tax list was by statute delegated to the county auditor. The county auditor pursuant to statute applied the consolidated tax for state, city, county and school purposes to twenty per cents of the assessed value of the shares of petitioner, and certified the tax list to the county treasurer for collection on December 31st of each year. The tax list was not made up and completed until after the millage rates for state, county, city and school purposes was known. The millage for state purposes was fixed by resolution of the State Executive Council in August of each year. (R. 588-589.) The millage for county purposes was fixed by the Board of Supervisors in September of each year. (R. 588-589.) The amount of revenue necessary to be raised for school purposes was fixed by the Board of Directors of the Independent School District in dollars, in July of each year and certified in that form to the county auditor, whose duty it was to compute the millage rate necessary to raise the amount so certified. (R. 588-589.) The amount necessary for municipal purposes was similarly fixed by the City Council of the City of Des Moines in August or September of each year. (R. 588-589.)

The consolidated tax applied to twenty per cent (20%) of the assessed value of petitioner's shares during the four years was as follows:

1919 — 137.8 mills
1920 — 157 "
1921 — 164 "
1922 — 160.4 "

The amount of banking capital represented by shares of stock in national banks and state banks and trust companies which was subjected to taxation in the City of Des Moines during each of the four years was as follows:

	1919	1920	1921	1922
National Banks	$3,099,205	$3,276,168	$3,587,657	$3,485,535
State Banks and Trust Companies	4,519,134	4,634,356	6,320,367	6,086,481

(See Record 750.)

Between 1919 and 1923 litigation was pending involving the right of state and national banks to deduct from the assessed value of their shares of stock, the par value of tax-exempt United States bonds and securities owned by the bank. This litigation was ultimately determined adversely to the banks. See *Des Moines National Bank v. Fairweather, et al.*, 191 Iowa 1240; 263 U. S. 103.

On November 28, 1923, petitioner offered to pay the county treasurer the amount of taxes upon the assessed value of its shares for the years in question, computed at the rate of five mills on the dollar, with interest. On November 30, 1923, the petitioner, pursuant to demand of the delinquent tax collector (which included the threat to proceed by distress and sale of petitioner's property for the collection of said taxes and additional penalties), paid taxes and penalties as hereinbefore set forth, and at the time of said payment filed with the county treasurer its protest in writing. (R. 19.) Petitioner filed with the county auditor its claim for refund of the taxes and penalties so paid, on September 14, 1925, and the board of supervisors on July 15, 1927, but after the institution of this action, denied said claim for refund (R. 557). The county treasurer, after the filing of the petitioner's claim, remitted funds to the Treasurer of State, to the City Treasurer of Des Moines, to the Treasurer of the Independent

School District, and also retained funds for county purposes in the following amounts:

Year	To Treasurer of State.	City Treasurer.	School Treasurer.	County.
1926	$502,103.00	$2,724,250	$2,972,351	$1,333,597
1927 (11 mo.)	488,715.00	2,743,833	2,880,859	1,171,223

(R. 700.)

And the amount of money to be collected in Des Moines in 1928, as shown by the tax lists at the time of the trial was:

State	$ 424,295
County	1,197,457
City	2,737,872
School	3,038,901
Soldiers' Bonus (State)	32,003
Moneys and Credits	160,010

(R. 701, 824.)

The Existence and Taxation of Moneyed Capital.

The testimony with respect to the quantity, ownership, and use of moneyed capital was necessarily voluminous. The petitioner called approximately two hundred witnesses to testify with respect to the business carried on by numerous corporations, copartnerships and individuals engaged in various phases of the loan and investment business in the City of Des Moines. The evidence may be more readily understood if treated by classes. We shall therefore consider the evidence in the following classes:

A—"moneyed capital" consisting of shares of stock of domestic corporations engaged in the loan and investment business, which were assessed by the assessor and board of review as "corporation stock", on form No. 1 of the assessment roll, and certified to the auditor in that form but which were placed on the tax list as "moneys and credits" and subjected to a tax of but five (5) mills on the dollar.

B—"moneyed capital" employed by non-resident corporations, copartnerships and individuals engaged in loaning money on automobiles, cattle, and chattel security, and in discounting notes and commercial paper, assessed as "moneys and credits" and taxed at five (5) mills on the dollar.

C—"moneyed capital" employed by individuals in making loans for investment, and in notes, bonds and securities, assessed as "moneys and credits" and taxed at five (5) mills on the dollar.

"A".

During the four years in question, the shares of twenty-seven corporations, organized under the laws of Iowa and engaged in various phases of the loan business in the City of Des Moines, were assessed by the city assessor as "corporation stock" on form No. 1 of the assessment roll. Typical of such assessments is the 1919 assessment roll upon the shares of the Security Loan & Investment Company reproduced at R. 1015. The assessments upon the shares of these corporations were confirmed by the Board of Review in each of the years as "corporation stock", and were certified to the County Auditor in that form.

The County Auditor in making up the tax lists placed the assessments upon the shares of these corporations in the column "moneys and credits" and intentionally and uniformly applied thereto a tax at the rate of but five mills on the dollar. For convenience we have tabulated the assessments upon the shares of such corporations as shown by the evidence, showing the name of each corporation, together with the value of the shares assessed as "corporation stock" in each year which were taxed at five mills on the dollar:

Name of corporation	1919	1920	1921	1922
Security L. & Inv. Co.	$84,619	$64,010	$109,980	$133,904
Central Ia. Jt. St. L. Bk.		243,690	217,269	253,619
Iowa Inv. & Mtg. Co.	30,705	42,305	47,560	52,600
Des Moines Morris Plan Co.	96,433	102,044	100,302	100,000
Continental Sec. Co.	46,384	42,837	73,641	90,083
Garner Inv. Co.		51,495	56,690	20,000
Jesse F. Stevenson Co.	33,632	34,069	31,100	30,500
Farmers Bond & Mtg. Co.			152,489	120,366
Union Mtg. & Cat. L. Co.		214,399	1,044,797	950,435
Bond & Mtg. Co. of Ia.	36,770	290,163	233,580	247,593
Manning-Martin Co.	4,242	16,045	30,170	21,550
D. M. Jt. Stk. Ld. Bk.		247,124	217,700	214,106
1st & 2nd Mtg. Corp.	771,376	864,305	520,530	486,773
Com. Bldg. & Sec. Co.			57,321	104,305
Cont. Mtg. & Loan Co.			31,051	
D. M. Discount Co.			4,276	7,333
Bankers Mtg. Co.	602,270	1,486,815	933,290	897,996
Liberty Investment Co.			770,582	771,612
United Mtg. & Loan Co.	10,762	11,175	11,798	11,526
Merchants L. & Inv. Co.			31,450	59,474
Nat. Inv. & Fin. Co.		138,000	506,770	
Burns Bros. Co.				348,900
State Bond Co.				11,413
Polk County Mtg. Co.	32,910	25,145	28,607	9,317
Corn Belt Land & Loan Co.	4,114			
Guaranty Mtg. & Fin. Corp.	68,235	610,922	945,530	936,574
United Cattle L. & L. S. Co.		500,000	696,547	805,547
Total Assessments	$1,822,452	$4,984,543	$6,813,030	$6,685,526

Since it is conceded by the majority opinion of the Iowa Supreme Court that the shares of these corporations constituted a relatively material amount of moneyed capital within the meaning of Section 5219 of the Revised Statutes of the United States, we shall not burden this Court with a detailed recital of the evidence as to the business carried on by each of the competing corporations but will briefly refer to the record pages where the evidence with respect thereto may be found.

Two of these corporations, the shares of which were originally assessed as "corporation stock", but which were subse-

quently placed on the tax list and taxed at the five-mill rate, were Joint Stock Land Banks, organized under the Act of Congress, engaged in making loans on farm lands within the State of Iowa.

Central Iowa Joint Stock Land Bank. (R. 220, 222, 224.)

Des Moines Joint Stock Land Bank. (R. 312-316.)

Fifteen of such corporations made, sold and discounted loans secured by first mortgage liens on Iowa real estate, both farm lands and city property.

Security Loan & Investment Co. (R. 197-203.)

Iowa Investment & Mortgage Company. (R. 218.)

Continental Securities Company. (R. 257.)

Jesse F. Stevenson Company. (R. 285.)

Farmers Bond & Mortgage Company. (R. 292.)

Union Mortgage & Cattle Loan Company. (R. 300.)

Bond & Mortgage Company of Iowa. (R. 302.)

Manning Martin Company. (R. 307.)

First & Second Mortgage Corporation. (R. 313.)

Commercial Building & Securities Company. (R. 327.)

Bankers Mortgage Company. (R. 343.)

United Mortgage & Loan Company. (R. 349.)

Merchants Loan & Investment Company. (R. 350.)

National Investment & Finance Company. (R. 745.)

Guaranty Mortgage & Finance Corporation. (R. 617, 619.)

Three of these corporations financed public improvement contractors, engaged in constructing municipal improvements in cities and towns in Iowa. The corporations advanced funds to contractors to enable them to complete their contracts and received in payment of such advances,

at a discount, improvement securities issued by the municipalities. The securities were then sold to investors.

Security Loan & Investment Company. (R. 198-203.)
Continental Securities Company. (R. 258-259.)
Jesse F. Stevenson Company. (R. 286.)

Four of the corporations financed dealers in automobiles by the purchase of notes or acceptances secured by liens on motor vehicles in the possession of the dealer, or in the hands of purchasers.

Bond & Mortgage Company of Iowa. (R. 303.)
Des Moines Morris Plan Company. (R. 249.)
Continental Mortgage & Loan Company. (R. 337.)
Des Moines Discount Company. (R. 341.)

Three of the corporations made loans secured by liens on feeder cattle located in Iowa.

United Cattle Loan & Live Stock Company. (R. 742.)
National Investment & Finance Company. (R. 745.)
Union Mortgage & Cattle Loan Company. (R. 300, 319-323.)

Nine of such corporations purchased government, municipal, public utility and industrial bonds, which they resold to individual investors and institutions located in Des Moines and elsewhere:

Security Loan & Investment Company. (R. 198.)
Continental Securities Company. (R. 258.)
Garner Investment Company. (R. 266.)
Jesse F. Stevenson Company. (R. 285, 287.)
Bond & Mortgage Company of Iowa. (R. 302.)
Bankers Mortgage Company. (R. 344.)
Liberty Investment Company. (R. 160.)

Burns Brothers Company. (R. 743.)
Guaranty Mortgage & Finance Corporation. (R. 617-619.

Some of the corporations made collateral loans both for their own account and for other investors (See Jesse F. Stevenson Company, R. 288); others discounted notes and acceptances secured by liens on household appliances and other personal property. (Des Moines Morris Plan Company, R. 249.) The following corporations issued and sold to investors debenture bonds secured by the deposit of mortgages, municipal bonds or other securities in the hands of trustees:

Security Loan & Investment Company. (R. 214.)
Continental Securities Company. (R. 258.)
Farmers Bond & Mortgage Company. (R. 292.)
Commercial Building & Securities Company. (R. 327.)
Bankers Mortgage Company. (R. 345.)
State Bond Company. (R. 366.)
Guaranty Mortgage & Finance Corporation. (R. 617.)

Substantially all phases of the loan and investment business were carried on in the City of Des Moines during the four years in question by these corporations.

"B".

In each of the four years certain foreign corporations, copartnerships and individuals, operating under trade names, were engaged in various phases of the loan business in the City of Des Moines. The capital actually employed by these corporations, copartnerships and individuals was assessed by the city assessor as "moneys and credits" on form No. 2

of the assessment roll and the assessments were approved by the board of review. The assessments were then placed upon the tax list as "moneys and credits" and a tax of five mills on the dollar applied thereto by the county auditor. The moneyed capital of such corporations, copartnerships and individuals as shown by the record, may be tabulated as follows:

Name of Taxpayer	1919	1920	1921	1922
Iowa Guarantee Mtg. Corp.	$54,570	$306,945	$147,423	$142,000
Federal Cattle Loan Society		85,000	861	
Bankers Loan & Inv. Co.	10,300		55,000	151,570
Motor Finance Co.			8,085	15,300
M. Aliber & Co.	13,790	8,040	17,524	12,117
Loyal Loan Co.	25,000	25,000	25,000	25,000
Capital Loan Co.	2,523		6,553	7,660
State Loan Co.	22,500			
Des Moines Loan Co.	5,780	12,283		7,368
Globe Loan Co.	2,600	3,500	5,000	7,500
Home Loan & Inv. Co.	9,200	12,400	13,400	13,557
Totals	$146,263	453,168	278,846	382,072

Six of these taxpayers were engaged in the "small loan business" which consisted of making loans not exceeding $300.00 secured by chattel mortgages on personal property, principally household furniture and automobiles. Most of these loans were payable in installments.

M. Aliber & Company. (R. 584.)
Loyal Loan Company. (R. 281.)
Capital Loan Company. (R. 653.)
State Loan Company. (R. 655.)
Des Moines Loan Company. (R. 282.)
Globe Loan Company. (R. 694.)

In 1920 the Federal Cattle Loan Society reported to the city assessor notes of $144,241, evidencing loans on feeder cattle, together with money on deposit of $17,570; bills pay-

able of $76,811 were deducted, leaving a net assessment of $85,000. (R. 159, 274.)

The Iowa Guarantee Mortgage Corporation financed dealers in automobiles by the purchase at a discount of sales contracts and trade acceptances secured by liens on automobiles in the hands of dealers or purchasers. In 1919 this Company handled a gross volume of business of $1,013,740.00; in 1920, $1,179,032.00; in 1921, $411,751.00; and in 1922, $606,-999.00. (R. 262-63.) This company issued bonds which were sold to banks and individual investors. (R. 262.) The bonds were secured by deposit of the company's collateral with the Des Moines Savings Bank & Trust Company as trustee. The Motor Finance Company was a copartnership engaged in similar business. (R. 298.)

"C".

Large numbers of individual taxpayers residing in the City of Des Moines held notes representing loans, both secured and unsecured. Numerous individuals also held notes and bonds of railroads, public utilities and industrial concerns. Assessments upon securities of this character were uniformly made on form No. 2 of the assessment roll as "moneys and credits". The good faith indebtedness of the taxpayer was deducted from the gross amount and the net assessment subjected to a tax of five (5) mills on the dollar. A large amount of evidence was introduced showing the character of such loans made or held by individual taxpayers. The net assessments upon securities of this character disclosed by the evidence during each of the years, was as follows:

1919 — $1,422,274.00
1920 — $1,768,048.00
1921 — $1,587,436.00
1922 — $1,783,765.00

The county auditor, or his deputy acting under his authority in making up the tax list in each of the four years deliberately and systematically placed all assessments upon the shares of domestic corporations engaged in the loan business under the head "moneys and credits" and applied thereto a tax at the rate of five (5) mills on the dollar. (R. 582.) The county auditor was called as a witness by petitioner and testified that the assessments upon the shares of the Jesse F. Stevenson Company were certified to him upon the assessor's district book as "corporation stock" and that in each year he deliberately and intentionally placed the same upon the tax list under the column "moneys and credits" and computed the taxes thereon at the five (5) mill rate. (See R. 236, 237, 238.) The auditor further testified:

"The method used in the assessment and the computation of taxes upon the shares of stock in Iowa corporations which were engaged in business in the City of Des Moines during the four years, 1919 to 1922, inclusive, was substantially the same as I have testified to with reference to the Jesse F. Stevenson Company as to the manner of the return upon the assessment roll; the entry of the assessment upon the assessor's book, and the entry of the same upon the tax list.

Q. Now with respect to individuals, in the year 1919 Mr. Rhoads, how were individuals, who had notes, mortgages and other evidences of indebtedness taxed upon the tax list?

A. Taxed on five mills on the dollar.

Q. Now was there in the year 1919 any individual in the taxing district of the City of Des Moines who had an assessment designated as "Moneyed Capital" which was taxed at the consolidated levy?

A. Not to my knowledge.

Q. Now with respect to the year 1919, where corporations were engaged in business in the City of Des Moines, how were the shares of stock of such corporations taxed when they were certified over on the assessor's book as "corporation stock"?

A. They were placed in the column headed "moneys and credits" and taxed at five mills on the dollar.

Q. Were the shares of stock of corporations so assessed placed on the tax list as moneyed capital, and taxed at the consolidated levy rate?

A. Not to my knowledge, no sir.

Q. During the year 1919, were there any assessments against individuals representing money loaned or invested in notes or securities, such as normally enter into the business of banking, which were taxed at more than five mills on the dollar?

A. All money assessed by the assessor in the hands of individuals was taxed at five mills on the dollar.

Q. In the year 1919, were there any notes in the hands of individuals taxed at a higher rate than five mills on the dollar?

A. Not to my knowledge, there were not. (R. 239, 240.)

* * * *

As far as I know, there was no difference between notes given, evidencing loans of money or investment of funds for the purpose of earning interest, and any other notes. They are not so listed on the tax books and I cannot tell you. There was no distinction in the method of taxation of notes of that general class and character and any other notes." (R. 240.)

* * * *

"With the exception of banks and trust companies, the taxes upon the assessments of corporation stock were computed on the basis of five mills on the dollar for the year 1919. The taxes were so computed and placed on the tax list by authority of the county auditor. That was true also of the year 1920. There were no assessments upon the shares of stock of any corporation in the City of Des Moines during the years 1919 and 1920, other than the shares of banks and trust companies, which were taxed at a rate in excess of five mills upon the dollar. The same is true of the years 1921, and 1922.

Q. Now with respect particularly to companies that were engaged in the business of making mortgage loans, investment companies and companies that were engaged in the purchase and sale of commercial paper, and similar concerns, what is the fact as to the rate at which the shares of stock of such corporations were taxed during the entire four year period?

A. They were assessed five mills on the dollar.

Q. Do you mean the five mill rate was applied to the assessed value of such shares?

A. It was.

(R. 241-242.)

When the taxes upon the shares of such corporations were put on the tax list at the five mill rate, they were put there during the two years that I was county auditor with the intention that the taxes would be so collected by the county treasurer's office; and so far as I know, that was true of the taxes that were computed and spread on the tax list during the years 1919 and 1920.

(R. 242.)

Q. Was there any moneyed capital whether in the hands of individuals, or in the form of shares of stock of corporations, that was in fact taxed upon the same basis with the shares of stock in banks and trust companies—any form of moneyed capital of any kind that was in fact taxed at the consolidated levy rate?

A. Not to my knowledge, outside of banks.

(R. 247.)

"There were no assessments against individuals in the year 1920 for notes, bonds or other evidences of indebtedness which were taxed at a higher rate than five mills on the dollar. The same is true in the years 1921 and 1922. They were all handled the same in all four years. All assessments against individuals which were returned on form No. 2 on the back of the assessment roll were taxed at the uniform rate of five mills on the dollar of valuation.

It is true that in the years 1920, 1921 and 1922, all individuals having notes, mortgages or other evidences of indebtedness representing money loaned out in any form were taxed at five mills on the dollar. Shares of stock in loan and investment companies in the years 1919, 1920, 1921 and 1922 were all taxed on the basis of five mills on the dollar. Shares of stock in corporations, other than banks and trust companies, engaged in the loan and investment business were taxed in substantially the same manner in all four years as were the shares of stock in the Jesse F. Stevenson Company. You will find that the assessed value of the shares of cor-

poration stock was placed upon the tax list under the head of "Moneys and Credits" and taxed at the moneys and credits rate of five mills on the dollar." (R. 582.)

Upon cross examination the auditor testified that in so listing the shares upon the tax list, he acted under his own interpretation that the statutes of the state gave him the right, as county auditor, to make changes, and that such changes, were made after taking the subject up with the legal advisers of the board of supervisors and county auditor. (R. 243.) The auditor also testified that during the years 1919 and 1920 the taxes upon the shares of the Security Loan & Investment Company were originally computed at the consolidated millage rate applied to twenty-five percent of the assessed value. That after the tax list had been certified to the county treasurer for collection he changed the list so as to place such shares in the column "moneys and credits" and subjected them to a tax at the five mill rate. Similar changes were made in the case of the Des Moines Joint Stock Land Bank, the Central Iowa Joint Stock Land Band and the Des Moines Morris Plan Bank for the years 1921 and 1922. (R. 229 to 235 inclusive.) The auditor testified that such changes were made so as to take such shares from the "high levy" to "moneys and credits" and to reduce the amount of the taxes upon the shares of such corporations. (R. 230.)

The Banking Business of Petitioner.

The petitioner, during the years in question, had accounts of approximately 400 banks located in Iowa, to many of which it loaned money. (R. 456.) It made loans to automobile dealers located in Des Moines and elsewhere in Iowa. (R. 457.) The loans were evidenced either by the direct unsecured obligation of the dealer, or by collateral

notes, with warehouse receipts covering cars in warehouses, or by the discount of notes given, by purchasers of automobiles, to the dealers. (R. 459.) It advanced credit to distributors of automobiles upon drafts secured by bills of lading covering cars shipped to local dealers by the distributors. (R. 459.) It discounted trade acceptances and installment notes for the purchase of apparatus or equipment, as well as trade acceptances and notes given to dealers as part of the purchase price of merchandise. (R. 460.) It discounted municipal and school district warrants. (R. 465.) It extended credit on notes secured by warehouse receipts covering various types of commodities in storage and in transit. (R. 462.) It extended credit for the purpose of providing funds for the purchase and feeding of cattle (R. 462), some of such loans being evidenced by the direct note of the borrower without chattel mortgage security (R. 463). It rediscounted for its correspondent banks notes of customers of such banks secured by chattel mortgages on cattle (R. 463). It made loans to individuals of less than $300.00, such loans in typical months averaging from 161 to 200. (R. 463.) Many of such loans were made with the expectation that they would be paid off in installments. It purchased, sold, and dealt in United States Government securities, and other bonds and securities, some of which it sold to its customers. (R. 464.) It bought bonds of Iowa municipalities, and some municipalities outside of Iowa. (R. 464.) It held industrial bonds and foreign government bonds. (R. 464.) It financed contractors engaged in public improvement work throughout the State of Iowa, and purchased, at an agreed price, public improvement certificates or bonds in which the contractors were paid. (R. 464.) It extended credit secured by mortgages on Iowa farms (R. 465), and purchased and carried real estate mortgage loans for its correspondent banks, and for insurance companies and indi-

viduals. (R. 465.) It discounted notes of companies engaged in the tire and rubber business. (R. 469.)

The petitioner offered in evidence excerpts from the annual reports of the Comptroller of the Currency, which disclosed that during the years 1919 to 1922 National Banks in Des Moines, and other cities and towns in Iowa, held substantial amounts of loans secured by mortgages on improved real estate, loans secured by warehouse receipts covering commodities in storage and in transit, and discounted acceptances and commercial paper collaterally secured by liens on merchandise, cattle, stocks, bonds and other personal property. (R. 623 to 642.) The reports of the Comptroller of the Currency also disclosed that during the four years National Banks in Des Moines, and other cities and towns in Iowa, held large amounts of United States Government bonds and notes, state, county and municipal bonds, industrial, railroad, public utility and other public service corporation bonds and notes. (R. 629, 633, 635, 636, 639, 642.)

The adjudication in Munn, county treasurer, v. Des Moines National Bank, 18 Fed. (2) 269.

During the four years in question, the Des Moines National Bank, a corporation organized under the national banking laws, the Bankers Trust Company and the Iowa Loan & Trust Company, corporations organized under the laws of Iowa, were all engaged in the banking business in Des Moines. On January 20, 1923, these banks filed bills in equity in the United States District Court for the Southern District of Iowa against the county treasurer of Polk County. These bills sought injunctions against the collection of all taxes upon the shares of stock of the plaintiffs in excess of five mills on the dollar of assessed valuation. (R. 841.) The basis for the relief sought was the same set up by petitioner in this suit. On May 5, 1925 a Special Master appointed to

hear the evidence and report his conclusions of fact and law to the Court, filed his report in which he found as follows:

> "Conclusion: It is my conclusion that moneyed capital in the hands of individual citizens of this state and living in Des Moines, Iowa, was taxed at five mills on the dollar of actual valuation, and that substantial amounts of such moneyed capital was so taxed during the years 1919, 1920, 1921 and 1922, and that it was the habitual practice of the taxing officers of Polk County to so tax moneyed capital in the hands of individuals, and that it was intentionally so done by them. That the complainants are entitled to relief and that the defendant, or his successor in office, should be enjoined from collecting or attempting to collect taxes from the complainants in excess of a sum computed at five mills on the dollar of the assessed valuation of the shares of stock of each of said complainants for the four years in question, as such sums are set forth in the table in division VII hereof, together with interest upon such sums at the rate of 6% per annum from the date they were payable." (R. 952.)

Exceptions were filed to the said report but were overruled, and a decree was entered by said court in each of said suits perpetually enjoining the collection of taxes upon the said shares at rates in excess of five mills on the dollar (R. 970 to 974, inc.). An appeal was prosecuted to the Circuit Court of Appeals for the Eighth Circuit, which upon submission affirmed the judgment of the District Court, the opinion of the Circuit Court of Appeals being dated February 28, 1927, and appears on pages 977 to 994, inclusive, of the Record. This opinion is reported in 18 Fed. (2d) 269. The board of supervisors of Polk County paid bills for reporters, witnesses', and attorneys' fees, court costs, printing bills, for appellant in said cause. (R. 741.) The shares of the Des Moines National Bank and Bankers Trust Company were ultimately taxed at but five mills on the dollar during the years involved. (R. 759.)

The Iowa Supreme Court Decision.

The action was tried in the District Court of Polk County, Iowa, which rendered a decree denying to the petitioner the relief sought without findings of fact or of law, and without an opinion by the presiding judge; petitioner perfected an appeal to the Supreme Court of the State of Iowa. The Opinion of the Iowa Court, which was concurred in by five Justices, four members of the court dissenting and filing a dissenting opinion, sets out the method of taxation applied to the shares of petitioner. Following this statement, the majority opinion says:

> "During these years *a large number of domestic corporations employing, as we shall assume, moneyed capital, in competition with plaintiffs in Des Moines in like* form made to the assessor their sworn statements. The assessor in these cases used the same classification and assessment, applied to the capital of these corporations the same basis of assessment and made up and returned to the county auditor the assessment rolls and the assessor's books in identically the same form and on the same basis as in the case of the assessments against the plaintiffs.
>
> The county auditor in some of these assessments against competing corporations fixed the taxable value at 20 per cent of the actual value and applied the consolidated levy as in the case of the plaintiffs. After the tax books had passed into the hands of the treasurer, but before payment, the county auditor changed these assessments as they appeared upon the tax books to assessments of moneys and credits and applied to them the five mill levy. As to the rest of the assessments of the competing domestic corporations the county auditor instead of entering on the tax books the assessments as taxes upon "corporate stock" and applying the consolidated levy upon 20 per cent of the valuation, extended them on the tax books as "moneys and credits" and applied the five mill levy on the dollar of actual valuation under Section 1310 and 1311, Code Supplement 1913.

During these years there were in the City of Des Moines a large number of persons and a few foreign corporations, who, as we shall assume, were employing moneyed capital in competition with plaintiffs. The assessor classified and assessed this competing capital as "moneys and credits". He made up the assessment rolls and assessor's books accordingly and returned them to the county auditor. The county auditor extended these assessments upon the tax books as "moneys and credits" and applied to them the five mill levy upon the actual net valuation." (R. 1341 and 1342.)

The majority then hold that although under the statutes of Iowa the method of assessment and taxation of the shares of petitioner was clearly defined, and mandatory upon the taxing officials, nevertheless as to the large number of individuals and corporations owning moneyed capital in substantial amounts which were assessed as "moneys and credits" and taxed at five mills upon the dollar of actual valuation, petitioner's remedy was solely by appeal from the action of the assessing bodies. As to the corporations in competition with petitioner in the taxing district in said years, the shares of stock of which were assessed as "corporation stock" but whose assessments were changed by the county auditor to "moneys and credits", and thereby subjected to a tax at but five mills on the dollar, petitioner was not entitled to the relief prayed because the county auditor acted unlawfully in making such change, notwithstanding that under the statutes of the State, he was the official to whom was remitted the power of making up the tax lists and in making up the tax lists he acted under advice of counsel for the Board of Supervisors. The opinion further holds that the acts of the county auditor being unlawful were not binding upon the State and its political subdivisions for the auditor was a mere usurper of authority; since the State was not bound by the acts of the county auditor, its right to collect taxes upon the moneyed capital at the consolidated millage rate

was not barred. This conclusion was reached by the Iowa Supreme Court notwithstanding that seven years had elapsed since the date when the last taxes upon such moneyed capital became payable, and notwithstanding the further fact that there was neither pleading nor proof that respondents had ever attempted to make collection of the taxes upon such moneyed capital except at the five mill rate, nor that they expected to attempt such collection in the future.

SPECIFICATION OF ERRORS.

Your petitioner further shows that the final decision, judgment, and decree of the Supreme Court of Iowa, affirming the judgment of the District Court of Polk County, Iowa, entered in said cause, is erroneous in the following respects:

a. Because it is thereby decided, established, and adjudged that the petitioner's shares, being shares of a national bank, may be taxed at a greater rate than is imposed upon other moneyed capital in the hands of individual citizens of said State, contrary to the provisions of Section 5219 of the Revised Statutes of the United States.

b. Because the said decision and judgment of the Supreme Court of Iowa denies to petitioner the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States, in that in the administration of the statutes of Iowa by officers of the State and its political subdivisions there was an intentional, systematic, general, and habitual method or plan of taxation whereby large and substantial amounts of other moneyed capital within the meaning of Section 5219 of the Revised Statutes of the United States were taxed at rates from one-fifth to one-seventh as much as the taxes imposed upon the assessed value of the shares of the petitioner.

c. Because by said decision and judgment the said Supreme Court of Iowa held that there was no intentional, systematic, general, and habitual method or plan of taxation in the administration of the statutes of Iowa by officers of the State and its political subdivisions, whereby large and substantial amounts of other moneyed capital within the meaning of Section 5219 of the Revised Statutes of the United States were taxed at rates from one-fifth to one-seventh as much as the taxes imposed upon the assessed value of the shares of petitioner.

d. Because by said decision and judgment the Supreme Court of Iowa held that the acts of the county auditor in making the tax list, or in making changes in the tax list, so as to subject the shares of stock of competing corporations to a tax of from one-fifth to one-seventh as much as the tax to which plaintiff's shares were subjected, were illegal and void acts of a merely ministerial or clerical officer, were a mere nullity, were the result of usurped authority, and were not the acts of the State taken through its duly constituted officers, and were not binding upon it.

e. Because the said decision and judgment of the Supreme Court of Iowa held that the "State and all of its authorized officials have acted in the utmost good faith and in accordance with the constitutional and statutory rights of petitioner."

f. Because by said decision and judgment the Supreme Court of Iowa held that there was no discrimination in the levy or assessment as between the petitioner and competing corporations, and that the State had not knowingly and wilfully discriminated in the collection of taxes.

g. Because the said decision and judgment of the Supreme Court of Iowa denied to petitioner its rights arising under the Fourteenth Amendment to the Federal Constttution and Section 5219 of the Revised Statutes of the United States upon the ground, in part, that it did not appear that

the illegal acts of the county auditor were ever called to the attention of the board of supervisors, the executive council, the department of justice, the legislature, or any of the authorities of the State who had any power of supervision or duty to enforce correction of the misfeasances of the county auditor or county treasurer.

h. Because the decision and judgment of the Supreme Court of Iowa held that it was not bound by the decision of the Circuit Court of Appeals for the Eighth Judicial Circuit in *Munn v. Des Moines National Bank* and *Munn v. Bankers Trust Company*, 18 Fed. (2d) 269, which decision became final and which decision was of the identical Federal questions and upon the identical facts involved in this case, and constituted an adjudication of the questions there decided binding upon respondents.

i. Because said decision and judgment of the Supreme Court of Iowa held that as to other moneyed capital in the hands of individuals and foreign corporations assessed by the assessor, reported by him to the board of review, approved by that board, entered upon the tax books, and so returned to the county auditor as "moneys and credits" and subjected to taxes at five mills on the dollar of assessed valuation, petitioner had an available remedy by appeal from the board of review, and that such remedy was exclusive.

SUMMARY OF ARGUMENT.

I.

The record discloses, and the opinion of the Iowa Supreme Court concedes, that large and material amounts of moneyed capital in the hands of individual citizens of the State in the taxing district were subjected to taxation at but five mills on the dollar while the shares of petitioner during the same years were taxed at rates from five to seven times greater. This constitutes a clear discrimination against the shares of petitioner, prohibited by Section 5219 of the Revised Statutes of the United States.

First National Bank of Hartford v. City of Hartford, 273 U. S. 548.
Minnesota v. First National Bank of St. Paul, 273 U. S. 561.
Merchants National Bank of Richmond v. Richmond, 256 U. S. 635.
First National Bank of Guthrie Center v. Anderson, 269 U. S. 341.
First National Bank v. Chapman, 173 U. S. 205.
Merchants & Mfgs. National Bank v. Penn., 167 U. S. 461.
Amoskeag Savings Bank v. Purdy, 231 U. S. 373.
Mercantile National Bank v. New York, 121 U. S. 138.
Boyer v. Boyer, 113 U. S. 689.
Evansville National Bank v. Britton, 105 U. S. 322.
Whitbeck v. Mercantile National Bank, 127 U. S. 193.
Supervisors Albany County v. Stanley, 121 U. S. 535.
People ex rel. v. Weaver, 100 U. S. 539.
Eddy, County Treasurer, v. First Nat'l Bk. of Fargo, 275 Fed. 550, (C. C. A. 8th Circuit).
Allen Munn, Treasurer v. Des Moines Nat'l Bank, 18 Fed. (2d) 269, (C. C. A. 8th Circuit).

II.

A tax law as it leaves the legislative hands may not be obnoxious to any challenge upon constitutional grounds, and yet the officers of the State charged with the administration of that valid tax law may so act under it in the matter of assessment or collection as to work a trespass upon the property rights of the taxpayer, prohibited by the Fourteenth Amendment to the Constitution of the United States. See *Reagan v. Farmers Loan & Trust Co.*, 154 U. S. 362.

A.

The record here discloses that the auditor in preparing the tax lists followed an intentional, systematic and uniform plan by which a gross discrimination between the shares of petitioner and the shares of competing corporations was created. The statutes as administered by the county auditor produced in this case a gross discrimination against the shares of petitioner, in violation, not only of the restriction contained in Section 5219 of the Revised Statutes of the United States, but as well a violation of Section One of the Fourteenth Amendment.

Sunday Lake Iron Co. v. Wakefield, 247 U. S. 350.
Cummings v. Merchants National Bank, 101 U. S. 153.
Greene v. L. & I. Ry. Co., 244 U. S. 499.
L. & N. Rd. Co. v. Greene, 244 U. S. 522.
Illinois Central R. Co. v. Greene, 244 U. S. 555.
Raymond v. Chicago Union Traction Co., 207 U. S. 20.
Sioux City Bridge Co v. Dakota County, 260 U. S. 441.
C. & N. W. R. Co. v. Osborne, 265 U. S. 14.
Iowa Central Ry. Co. v. Board of Review, 176 Iowa, 181.
Reagan v. Farmers Loan & Trust Co., 154 U. S. 362.
Munn, Treasurer v. Des Moines National Bank, 18 Fed. (2d) 269.

III.

The decision of the Iowa Supreme Court that the acts of the county auditor in placing the assessments upon the shares of competing corporations on the tax list as "moneys and credits" and taxing them at the five mill rate was not binding on the State, is clearly untenable. The statutes of Iowa remit to the county auditor the duty of preparing the tax lists. The statutes of the State constitute the county auditor a public official and delegate to him certain duties in connection with the imposition of taxes within the county. The State may not set up machinery for the imposition and collection of taxes, and by means of that machinery unlawfully exact taxes from petitioner, in violation of the restrictions imposed by Section 5219 of the Revised Statutes and the Constitution of the United States, and escape the obligation of making restitution by declaring that the action of the officers was not the action of the State.

Code of Iowa, Supp. 1913, Sec. 1072.
Code of 1897, Section 1387.
Section 1385.
Code Supp. 1913, Section 1383.
Code Supp. 1913, Section 1385-b.
Chapter 343 Laws 37th G. A.

Section 5219, Revised Statutes, prohibits every discrimination against the shares of national banks and in favor of a relatively material amount of other moneyed capital employed in substantial competition with national banks. This prohibition applies to discrimination arising not only through discriminatory assessments or valuations, but as well to discrimination arising from the application of discriminatory rates of taxation to the assessed values of the shares.

People v. Weaver, 100 U. S. 539.
Boyer v. Boyer, 113 U. S. 689.

Merchants National Bank v. Richmond, 256 U. S. 635.
First Nat'l Bank of Guthrie Center v. Anderson, 269 U. S. 341.
Evansville National Bank v. Britton, 105 U. S. 322.

IV.

The holding of the majority opinion of the Iowa Supreme Court that the State and its political subdivisions have the power to remove any discrimination against the shares of petitioner by enforcing payment upon the shares of competing corporations at the consolidated millage rate is without foundation in the record and denies petitioner a Federal right upon wholly untenable grounds. There is neither pleading nor proof that the taxing officers of Polk County have undertaken, or ever expect to collect further taxes upon the shares of competing corporations taxed at the five mill rate during the years 1919 to 1923 inclusive. The suggestion is purely speculative and without foundation in the record.

Montana Nat. Bank v. Yellowstone County, 276 U. S. 499.

V.

The taxes here involved were exacted of petitioner in violation of Section 5219 of the Revised Statutes of the United States and in violation of Section One of the Fourteenth Amendment. The evidence discloses that the payment was not voluntary but was made under compulsion, and to avoid seizure and sale of the property of petitioner and the accumulation of additional penalties. The petitioner therefore has a Federal right to have such illegal taxes refunded. The arbitrary denial of a refund of taxes exacted in violation of the laws and Constitution of the United States is it-

self a denial of the equal protection of the law prohibited by the Fourteenth Amendment.

Ward v. Love County, 253 U. S. 17.
Carpenter v. Shaw, 280 U. S. 363.
Munn, Treasurer v. Des Moines National Bank, 18 Fed. (2d) 269.

VI.

Under the statutes of Iowa as construed by the Supreme Court, the assessor and board of review had no power to assess the shares of petitioner as "moneys and credits". The method of assessment and taxation upon petitioner's shares was mandatory upon the assessing bodies. Resort to the board of review would therefore have been futile, and could afford petitioner no remedy as to the assessment upon its own shares. As to the moneyed capital assessed by the assessor and board of review as "moneys and credits", petitioner's only remedy would have been by way of appeal from the assessment upon each individual item of moneyed capital, which would involve the taking of several hundred separate appeals. When the laws of a State, as construed by the highest court require a taxpayer, who is discriminated against by the systematic undervaluation of other property, or improper classification thereof, to appeal from the assessments upon all other property within the taxing district, the law violates the Fourteenth Amendment to the Constitution of the United States because it denies to the aggrieved taxpayer the equal protection of the law and is equivalent to no remedy at all. The requirement of the majority opinion that petitioner's exclusive remedy as to the moneyed capital assessed as "moneys and credits" was by way of appeal from the board of review, denies petitioner the equal protection of the law and denies petitioner due process of law in contra-

vention of the Fourteenth Amendment to the Constitution of the United States.

Sioux City Bridge Co. v. Dakota County, 260 U. S. 441.

Raymond v. Chicago Union Traction Co., 207 U. S. 20.

Central of Georgia Railroad Co. v. Wright, 207 U. S. 127.

Turner v. Wade, 254 U. S. 64.

Ohio Valley Water Co. v. Ben Avon Borough, 253 U. S. 287.

VII.

The identical cause of action determined by the Supreme Court of Iowa was decided in the case of *Munn v. Des Moines National Bank, et al.*, 18 Fed. (2) 269. As a result of the decision in the *Munn* case, the moneyed capital represented by the shares of the Des Moines National Bank and the Bankers Trust Company was taxed at but five mills on the dollar during the years now involved. The determination of the Circuit Court of Appeals in the *Munn* case was a final judgment, since no effort was made to have it reviewed in this Court. Under these circumstances, the determination of the Federal Courts and the taxation of the shares of the Des Moines National Bank and Bankers Trust Company pursuant to such determination are binding upon the State Courts and require that the moneyed capital represented by the shares of petitioner shall be accorded taxation at the same rates.

Des Moines National Bank v. Fairweather, 191 Iowa, 1240.

First National Bank of Estherville v. City Council, 150 Iowa, 95.

Des Moines National Bank v. Des Moines, 153 Iowa, 336.

By Section 128 of the Judicial Code the Circuit Court of Appeals was invested with final jurisdiction in the case of *Munn v. Des Moines National Bank, et al.*, and its decision became final. In that case the same issues were tendered and decided as are involved in this case. The respondents in this case are in privity with the appellant Munn in the Circuit Court case. The State and its political subdivisions entered appearances, conducted the defense and paid the expenses incident to the conduct of that litigation. Under these circumstances, the adjudication in the *Munn* case is binding upon the respondents.

ARGUMENT.

I.

Petitioner is a National bank. In *First National Bank of Guthrie Center v. Anderson*, 269 U. S. 341, this court speaking by Mr. Justice Van Devanter said:

> "National banks are not merely private moneyed institutions but agencies of the United States created under its laws to promote its fiscal policies; and hence the banks, their property and their shares cannot be taxed under State authority except as Congress consents and then only in conformity with the restrictions attached to its consent."

The consent of Congress was evidenced by Section 5219 of the Revised Statutes of the United States, which during the years here involved, provided as follows:

> "Nothing herein shall prevent all the shares in any association from being included in the valuation of the

personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each state may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that *the taxation shall not be at a greater rate than is assessed upon other money capital in the hands of individual citizens of such State*, and that the shares of any national banking association owned by nonresidents of any State shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county or municipal taxes, to the same extent, according to its value, as other real property is taxed." (Italics ours.)

The majority opinion of the Supreme Court of Iowa concedes that during the years in question there were relatively large and substantial amounts of moneyed capital in the hands of individual citizens the taxes upon which were computed at but five mills on the dollar. This moneyed capital consisted of two classes:

1. Stock in domestic corporations engaged in various phases of the loan and investment business in the same field in which petitioner was engaged. These shares were assessed on the identical basis as the shares of petitioner, and discrimination arose from the fact that in making up the tax lists, the county auditor of Polk County deliberately, intentionally and systematically placed all assessments upon the shares of such competing corporations under the column "moneys and credits" and applied to the assessed valuation a tax of five mills on the dollar, at the same time applying the consolidated millage tax to 20 per cent of the assessed value of petitioner's shares, thus imposing a tax upon the shares of petitioner from five to seven times greater than was imposed upon the shares of competing corporations.

2. Money in the hands of individuals, foreign corporations and copartnerships engaged in various phases of the

loan and investment business, and money in the hands of individual taxpayers representing loans and investments, all of which was assessed as "moneys and credits" and taxed at five mills on the dollar.

In view of the decision of the Court below, a recitation of the evidence which abundantly establishes the existence of moneyed capital is unnecessary. Suffice to say that the Supreme Court of Iowa could not have arrived at any other conclusion upon the record before it. This Court has defined "moneyed capital" as the term is used in Section 5219 as including "all shares of stock or other interests owned by individuals in all enterprises in which the capital employed in carrying on the business is money, and the object of the business is the making of a profit by its use as money. It includes money in the hands of individuals employed in a similar way, invested in loans or securities for the payment of money, either as an investment of a permanent character or temporary, with a view to resale or repayment and reinvestment".

See *Mercantile National Bank v. New York*, 121 U. S. 138.

In the recent case of *First National Bank of Guthrie Center v. Anderson*, 269 U. S. 341, this Court had occasion to review a decision of the Iowa Supreme Court which had denied a National bank relief from alleged discriminatory taxation. This Court in that opinion said:

> "The restriction on the taxation of the shares often has been considered by this court. The earlier decisions have been reviewed from time to time in later cases, and all, taken collectively, may be summarized as showing, so far as is material here * * *
>
> 1. The purpose of the restriction is to render it impossible for any state, in taxing the shares, to create and foster an unequal and unfriendly competition with national banks, by favoring shareholders in state banks or individuals interested in private banking or engaged in operations and investments normally common to the business of banking. *Mercantile Nat. Bank v. New York*,

121 U. S. 138, 155, 30 L. Ed. 895, 901, 7 Sup. Ct. Rep. 826; *Des Moines Nat. Bank v. Fairweather, supra,* 116 (68 L. Ed. 190, 44 Sup. Ct. Rep. 23).

2. The term "other moneyed capital" in the restriction is not intended to include all moneyed capital not invested in national bank shares, but only that which is employed in such way as to bring it into substantial competition with the business of national banks. *Mercantile Nat. Bank v. New York, supra,* 157 (30 L. Ed. 902, 7 Sup. Ct. Rep. 826); *First Nat. Bank v. Chehalis County,* 166 U. S. 440, 461, 41 L. Ed. 1069, 1078, 17 Sup. Ct. Rep. 629.

3. Moneyed capital is brought into such competition where it is invested in shares of state banks or in private banking, and also where it is employed, substantially as in the loan and investment features of banking, in making investments, by way of loan, discount or otherwise, in notes, bonds or other securities with a view to sale or repayment and reinvestment. *Mercantile Nat. Bank v. New York, supra,* 155-157 (30 L. Ed. 901, 902, 7 Sup. Ct. Rep. 826); *Palmer v. McMahon,* 133 U. S. 660, 667, 668, 33 L. Ed. 772, 775, 776, 10 Sup. Ct. Rep. 324; *Talbott v. Silver Bow County,* 139 U. S. 438, 447, 35 L. Ed. 210, 213, 11 Sup. Ct. Rep. 594.

4. The restriction is not intended to exact mathematical equality in the taxing of national bank shares and such other moneyed capital, nor to do more than require such practical equality as is reasonably attainable in view of the differing situations of such properties. But every clear discrimination against national bank shares and in favor of a relatively material part of other moneyed capital employed in substantial competition with national banks is a violation of both the letter and spirit of the restriction. *New York v. Weaver,* 100 U. S. 539, 25 L. Ed. 705; *Boyer v. Boyer,* 113 U. S. 689, 701, 28 L. Ed. 1089, 1092, 5 Sup. Ct. Rep. 706; *First Nat. Bank v. Chapman,* 173 U. S. 205, 216, 43 L. Ed. 669, 673, 19 Sup. Ct. Rep. 407."

The rule was again repeated by this court in the case of *First National Bank of Hartford v. City of Hartford,* 273 U. S. 548.

The record discloses that during the four years the as-

sessments upon the shares of competing corporations ranged from approximately $2,000,000.00 to more than $6,000,000.00; while the assessments upon moneyed capital in the hands of individuals, copartnerships and non-resident corporations in competition with petitioner varied from $1,500,000.00 to more than $2,000,000.00. The existence of large and relatively material amounts of moneyed capital in the same taxing district in competition with petitioner was thus abundantly established.

We pass next to a consideration of the question of the rate of taxation imposed upon such moneyed capital. In the statement of the case, we have with some particularity set forth the testimony of the county auditor during the years 1921 and 1922. This witness was also chief deputy in charge of the tax department of the auditor's office in the years 1919 and 1920. This witness repeatedly testified, both on direct and cross examination that all assessments of corporation stock, except assessments upon the stock of banks and trust companies, were uniformly and intentionally taxed at but five mills on the dollar. In order that the matter may not escape the attention of the court, we again set forth the following excerpts from the record.

> "With the exception of banks and trust companies the taxes upon the assessments of corporation stock were computed on the basis of five mills on the dollar for the year 1919 * * * that was true also of the year 1920. There were no assessments upon shares of stock of any corporation in the City of Des Moines during the years 1919 and 1920 other than the shares of banks and trust companies which *were taxed* at a rate in excess of five mills upon the dollar. The same is true of the years 1921 and 1922." (See R. 241.)

Continuing, the auditor testified:

> "When the taxes upon the shares of such corporations were put on the tax lists at the five mill rate, they were

put there during the two years that I was county auditor (1921 and 1922) with the intention that the taxes would be so collected by the county treasurer's office; and so far as I know that was true of the taxes that were computed and spread on the tax lists during the years 1919 and 1920." (R. 242.)

The auditor again testified:

"Shares of stock in corporations other than banks and trust companies engaged in the loan and investment business were taxed in substantially the same manner in all four years as were the shares of stock in the Jesse F. Stevenson Company. You will find that the assessed value of the shares of corporation stock was placed upon the tax lists under the head of "moneys and credits" and taxed at the moneys and credits rate of five mills on the dollar." (R. 582.)

The tax lists for each of the years involved were in evidence. The statutes required the county auditor in the preparation of the tax lists to provide a separate column showing the date of payment. Page 383 of Exhibit 261, being the tax list for 1919, is reproduced in the record as a typical example of the tax list, and shows the payment by the Security Loan and Investment Company of taxes computed on the five mill basis on March 31, 1920, and on September 30, 1920, and the payment by Jesse F. Stevenson Company of taxes computed on the five mill basis on the same dates. (R. 1027.) E. R. Bennett, one of the respondents in the case, and who was county treasurer at the time of payment testified that he had instructed his deputies and clerks to accept money for taxes as shown by the tax books whenever the amount offered was the amount shown to be due by the tax lists. (R. 727.) The county auditor testified that when he made the tax lists, and placed thereon the shares of such corporations employing competing moneyed capital, he did so with the intention that the taxes would be so collected at the five mill levy by the county treasurer's office,

and that there were no assessments on the shares of stock of any corporation in the city of Des Moines during the years 1919 to 1922, other than the shares of banks and trust companies, which were taxed at a rate in excess of five mills on the dollar, nor was there any moneyed capital, whether in the hands of individuals or in the form of shares of stock of corporations, that was in fact taxed on the same basis with the shares of stock in banks and trust companies. We have heretofore pointed out that under the statutory provisions in effect at the times involved in this suit, the county treasurer was required by statute to collect the taxes as entered upon the tax lists, and the tax lists constituted his authority for such collection.

The statement in the majority opinion of the Iowa Court that the payment of taxes by such competing capital at but five mills on the dollar is shown only by inference and mutual assumption of the parties is not sustained by the record and is clearly erroneous.

Thus the record shows that large and material amounts of moneyed capital, as such term has been defined by this court, in the hands of individual citizens of the State in the same taxing district as petitioner, were subjected to taxation at grossly discriminatory rates as compared to the rates of taxation imposed upon the shares of petitioner in each of the years involved. This condition resulted from the exercise of unwarranted power on the part of the State and its political subdivisions, because it is directly violative of the consent granted by Congress to tax the shares of petitioner, at all, such consent being evidenced by Section 5219 of the Revised Statutes. Under all of the authorities cited in paragraph I of the summary of argument, we submit petitioner was entitled to the relief asked and the Iowa Court in denying it such relief, clearly erred.

II and III.

During the years in question the statutes of Iowa required that shares of stock in national and state banks, loan and trust companies, private banks and "all moneyed capital within the meaning of Section 5219 of the Revised Statutes of the United States" should be taxed at the same rates. Sec. 1310 Code Supp. 1913, which was in force during the period in question provided as follows:

> "All moneyed capital within the meaning of Section 5219 of the Revised Statutes of the United States shall be listed and assessed against the owner thereof at his place of business, and, if a corporation, at its principal place of business, at the same rate as state, savings, national bank, and loan and trust company stock is taxed in the same taxing district and at the actual value of the moneyed capital so invested."
>
> (Section 1310, Supp. to the Code of Iowa 1913, Sec. 1322, 1322-1-a, Supp. to the Code of Iowa 1913).

It will thus be seen that the State of Iowa adopted the classification made by Congress in Section 5219 of the Revised Statutes and that the Legislature of the State contemplated uniformity in taxation between the shares of petitioner and "moneyed capital". Such plan of taxation provides uniformity between bank shares and moneyed capital, and is entirely consistent with the restrictions imposed by the Federal law.

The city assessor of Des Moines during the four years involved testified with respect to the assessment of moneyed capital in the hands of individuals as follows:

> "When it came to the assessments in the hands of individuals or partnerships of notes, bonds, mortgages, securities, or other evidences of indebtedness, the assessments were made on form No. 2 of the assessment roll. If there were moneys and credits to be taxed, the net amount to be taxed was brought forward and en-

tered on form No. 1 of the assessment roll. That was the method of assessment followed by me as city assessor and by the deputies under my direction in the assessment of notes, bonds, mortgages, evidences of indebtedness, and credits, in the hands of individuals and partnerships in these years." (R. 622.)

We have already seen that assessments upon the shares of corporations engaged in the loan and investment business within the taxing district were made upon the same basis as the assessments upon petitioner's shares and were subsequently changed by the auditor and taxed at the five mill rate.

It was the further claim of petitioner that as the result of the intentional, systematic, habitual, and arbitrary administration of the tax laws of Iowa by its officers and the officers of its political subdivisions there was a substantial discrimination in the taxation of its shares as compared to the taxation of other moneyed capital within the meaning of Section 5219 of the Revised Statutes of the United States and within the class created by Sections 1310, 1322, and 1322-1-a, Iowa Code Supplement 1913, and that thereby there had been denied to petitioner the equal protection of the law, contrary to and in violation of the Fourteenth Amendment to the Constitution of the United States. It is firmly settled by the decisions of this Court that the purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. *Sunday Lake Iron Co. v. Wakefield*, 247 U. S. 350; *Sioux City Bridge Co. v. Dakota County*, 260 U. S. 441; *Cummings v. Merchants National Bank of Toledo*, 101 U. S. 153; *Greene v. L. & I. Railway Co.*, 244 U. S. 499; *Chicago & N. W. Ry. v. Osborne*, 265 U. S. 14; *Raymond v. Chicago Union Traction Company*, 207 U. S. 20.

Upon this phase of the case the testimony of the auditor conclusively shows that he acted intentionally and as a result of a plan or system. He testified as follows:

"There were no assessments upon the shares of stock of any corporation in the City of Des Moines during the years 1919 and 1920, other than the shares of banks and trust companies, which were *taxed at a rate in excess of five mills upon the dollar.* The same is true of the years 1921, and 1922.

Q. Now with respect particularly to companies that were engaged in the business of making mortgage loans, investment companies and companies that were engaged in the purchase and sale of commercial paper, and similar concerns, what is the fact as to the rate at which the shares of stock of such corporations were taxed during the entire four year period?

A. They were assessed five mills on the dollar.

Q. Do you mean the five mill rate was applied to the assessed value of such shares?

A. It was.

When the taxes upon the shares of such corporations were put on the tax list at the five mill rate, they were put there during the two years that I was county auditor with the *intention* that the taxes would be *so collected by the county treasurer's office;* and so far as I know, that was true of the taxes that were computed and spread on the tax list during the years 1919 and 1920."

(R. 242.)

"Q. Now with respect to the year 1919, where corporations were engaged in business in the City of Des Moines, how were the shares of stock of such corporations taxed when they were certified over on the assessor's book as "corporation stock"?

A. They were placed in the column headed "moneys and credits" and *taxed at five mills on* the dollar.

Q. Were the shares of stock of corporations so assessed placed on the tax list as moneyed capital, and taxed at the consolidated levy rate?

A. Not to my knowledge, no sir."

(R. 239.)

Some of the taxes upon the shares of competing corporations were first computed at the consolidated millage rate and in such cases the witness changed the tax list after it was made up. In each instance, the auditor testified that he knew the consolidated millage rates, and that he intended by making the changes to subject the shares of the individual corporation to a tax at but five mills on the dollar. Thus with respect to the 1919 taxes upon the shares of the Security Loan & Investment Company, the auditor says:

"Q. Did your intend by the change that you made to subject the shares of stock of this corporation to a tax of but $423.10?

A. I think it was done to change it from the high levy to moneys and credits, which it should be assessed under.

Q. Did you do it intentionally with the idea of imposing a tax of five mills on the dollar on the assessed valuation of the shares of stock in the corporation for that year?

A. I did."

(R. 230.)

With respect to a similar change in the taxes upon the shares of the Des Moines Joint Stock Land Bank, the auditor says:

"When I made the change I intended thereby to *subject* the shares of stock in the Des Moines Stock Land Bank to a *tax* of only five mills on the dollar of the assessed valuation. The change was made intentionally for the purpose of making the taxes upon the shares of the Des Moines Joint Stock Land Bank for the year 1921 at the rate of 5 mills on the dollar of the assessed valuation and no more."

(R. 232.)

With respect to the Central Iowa Joint Stock Land Bank, the taxes upon the shares of which were originally computed at the consolidated millage rate, the auditor says:

"When I made the change in the computation of taxes upon the shares of stock of the Central Iowa Joint Stock Land Bank, I *intended* to *subject* the shares of that corporation to a tax of five mills on the dollar and no more, and I intended that the taxes on the shares of that corporation should be collected by the county treasurer on the five mill basis."
(R. 233.)

Similar evidence was given with respect to the changes made by the auditor in connection with the taxes upon other corporations. With respect to the taxation of the shares of the Jesse F. Stevenson Company for the year 1919, the auditor testified:

"Q. By whose authority was the assessment upon the shares of Jesse F. Stevenson & Company placed upon the tax list in the 'moneys and credits' column and taxed at five mills on the dollar?
A. Under authority of the County Auditor, according to law."

It is well established by the decisions of this Court that when the statutes of a State are habitually and systematically administered by the officers, charged with the duty of enforcing them in such a way as to produce a deliberate discrimination, such conduct upon the part of the State and its taxing officers constitutes a denial of the equal protection of the law in violation of the Fourteenth Amendment. The principle was thus stated by Mr. Justice Brewer speaking for the Court in *Reagan v. Farmers Loan & Trust Company*, 154 U. S. 362, in which it was said:

"Neither will the constitutionality of the statute if that be conceded, avail to oust the Federal Court of jurisdiction. A valid law may be wrongfully administered by officers of the State and so as to make such administration an illegal burden and exaction upon the individual. A tax law as it leaves the legislative hands may not be obnoxious to any challenge and yet the of-

ficers of the State charged with the administration of that valid tax law may so act under it in the matter of assessment or collection as to work an illegal trespass upon the property rights of the individual."

The rule is thus stated by Mr. Justice McReynolds in *Sunday Lake Iron Company v. Wakefield*, 247 U. S. 350:

"The purpose of the equal protection clause of the 14th Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property."

In *Cummings v. Merchants National Bank of Toledo*, 101 U. S. 153, this Court had before it a case in which it appeared that the shares of corporations generally had been taxed at a fraction of their actual value while the shares of bank stock had been assessed at full value. This Court held that the action of the State constituted a violation not only of Section 5219 of the Revised Statutes but also a violation of the Fourteenth Amendment. In the course of the opinion, it is said:

"Independently of this Statute (Sec. 5219), however, we are of opinion that when a rule or system of valuation is adopted by those whose duty it is to make the assessment, which is designed to operate unequally and to violate a fundamental principle of the Constitution, and when this rule is applied not solely to one individual, but to a large class of individuals or corporations, that equity may properly interfere to restrain the operation of this unconstitutional exercise of power. That is precisely the case made by this bill, and if supported by the testimony, relief ought to be given."

A most exhaustive discussion of the controlling principles is found in the case of *Greene v. Louisville & Interurban Railway Co.*, 244 U. S. 499. There it appeared that all property in the State was uniformly assessed at from 40 to 70 per cent of its fair value, while the property and franchises of the plaintiff were assessed at 90 to 100 per cent of actual value. The assessment upon the Railway Company was made by the State Board of Equalization which was not charged with any duty as to the assessments upon other property generally in the State. This Court held that the equal protection clause of the Fourteenth Amendment applied alike to all of the taxing agencies of the State. The opinion of the Court was delivered by Mr. Justice Pitney who said:

> "Uniformity in taxing implies equality in the burden of taxation; and this equality of burden cannot exist without uniformity in the mode of the assessment, as well as in the rate of taxation." *Exchange Bank v. Hines*, 3 Ohio St. 1, 15, quoted in *Cummings v. Merchants' Nat. Bank*, 101 U. S. 153, 158, 25 L. Ed. 903, 905.
>
> It is equally plain that it makes no difference what basis of valuation—that is, what percentage of full value—may be adopted, *provided it be applied to all alike.* The adoption of full value has no different effect in distributing the burden than would be gained by adopting 75 per cent, or 50 per cent, or even 10 per cent as the basis—so long as either was applied uniformly. The only difference would be that, supposing the requirements of the treasury remained constant, the rate of taxation would have to be increased as the percentage of valuation was reduced. (Under Sec. 171 of the Constitution, the rate of taxation may be varied by the general assembly from year to year, according to requirements.) Therefore, the principal if not the sole reason for adopting "fair cash value" as the standard for valuations is as a convenient means to an end,—the end being equal taxation. But if the standard be systematically departed from with respect to certain classes of

property, while applied as to other property, it does not serve, but frustrates the very object it was designed to accomplish. It follows that the duty to assess at full value cannot be supreme in all cases, but must yield where necessary to avoid defeating its own purpose."

The record in this case demonstrates that the county auditor in so making the tax list as to subject the shares of petitioner to grossly discriminatory taxation when compared to other moneyed capital in the hands of individuals in each of the years involved acted intentionally and with the purpose, during the whole course of time involved in this case, of bringing about the taxation of such other moneyed capital at such grossly favorable rates. This is shown by the direct admission of the county auditor and by the further fact that his acts were taken only after he had the benefit of legal counsel for the board of supervisors. That his acts were habitual and continuous is clearly disclosed by the record. There was no other moneyed capital than the shares of stock of banks and trust companies which was subjected to taxes at as great rates as the taxes imposed upon petitioner's shares. Thus, there is undoubted support for the statement of the Justices of the Supreme Court of Iowa who concurred in the dissenting opinion in this connection, as follows:

"It is shown by the record, that the capital of national banks in the city of Des Moines during the years in question was about three million dollars, while that of state banks was from four and one-half to six million dollars. The assessments upon the shares of stock found from the evidence to be competing institutions during said years, varied from about one and one-half millions in 1919 to an excess of five millions in 1922, and, under the rule laid down by the italicized portion of *First National Bank of Hartford v. City of Hartford, supra*, there has been a clear violation of section 5219 of the Revised Statutes of the United States.

> The action, hereinbefore mentioned, of the county auditor, was intentionally done. It applied to all of the assessments upon the shares of stock of the competing corporations. Therefore, within the meaning of the authorities from which quotations are hereinbefore given, to wit, *Reagan v. Farmers' Loan & Trust Company*, 154 U. S. 362, 14 S. Ct. 1047, 38 L. Ed. 1014; *Sioux City Bridge Company v. Dakota County*, 260 U. S. 441, 43 S. Ct. 190, 67 L. Ed. 340, 28 A. L. R. 979; *Cummings v. Merchants' National Bank of Toledo*, 101 U. S. 153, 25 L. Ed. 903; *Raymond v. Chicago Union Traction Company*, 207 U. S. 20, 28 S. Ct. 7, 52 L. Ed. 78, 12 Ann. Cas. 757, and the other cases cited in connection therewith, an illegal discrimination has been worked against the appellant national banks and their shareholders by systematic, intentional, wrongful; and arbitrary administration of the law. In order for the appellant national banks to be entitled to relief, it is not a prerequisite that the action of the county auditor was done with intent to injure said banks. See *Taylor v. L. & N. R. Co.*, (C. C. A.) 88 F. 350."
>
> (R. 1377.)

But it is said by the Iowa Supreme Court that the authorities to which we have referred are inapplicable to the instant case because the auditor in applying the five mill rate to the assessments upon the shares of competing corporations was acting in violation of the statutes of the state, and that his action was not binding upon the state because he did not represent it and was a mere usurper of authority. This conclusion is wholly untenable. Section 1072 Code of Iowa, Supp. of 1913, creates the office of county auditor, provides for his election and the tenure of office; Section 1383, Code Supp. 1913 requires the auditor to transcribe all assessments certified to him from the several townships, towns and cities into a book to be known as the tax list, in which shall be entered the names of the taxpayers, descriptions of land, number of acres and value, number of town lots and value, value of personal property with appropriate columns for polls and payments. By statute it is made the duty of

the county auditor to compute the taxes upon each assessment by applying the proper millage levies in the various townships, cities, towns, school districts, etc. He is required before December 31st of each year to deliver the completed tax list to the county treasurer. The list constitutes the county treasurer's authority for the collection of the taxes therein levied. Code 1897, Sec. 1387. The county auditor has authority to correct any error in the assessment or tax list and may assess and list any property omitted from taxation. Section 1385-b Code Supp. 1913. Townships, cities, towns, counties, school districts and other local taxing districts are required to certify to the county auditor the money needs of the taxing district for the ensuing year in dollars, and the auditor is required to determine the millage levy which will be required to raise the amount of money so certified by the local bodies and to apply same to the assessed valuations in making up the tax list. Chapter 343, Laws of the 37th G. A. The county treasurer is required to collect the taxes shown upon the tax list. Code 1897 Sec. 1390. The treasurer has no authority to correct errors in the tax list but must give receipt to taxpayers upon tender of the amount shown by the tax list. He is also required to furnish the taxpayer a statement in writing of the taxes due as shown by the tax list. Code 1897, Sec. 1396 and 1397.

The mere assessment of values imposes no tax. The collection of tax payments is an act which can only be consummated after the imposition of a tax. Taxes are imposed by law, but the law in Iowa remits to the county auditor the application of the levy to the values, and he is the only agent of the state, or any of its political subdivisions, invested by law with authority to impose the ultimate amount upon the taxpayer which represents his due proportion of the cost of government. It is an essential step in the fixation of tax liability in Iowa that the county auditor prepare the tax list. Perhaps he has no duty imposed upon him by law so im-

portant and so far-reaching in its effect as this duty. To say that he is not a duly constituted agent of the state and its political subdivisions in connection with the imposition of taxes such as involved in this case is to deny the express and unequivocal language employed by the legislature of the state in erecting the machinery for the exaction of the funds necessary for conducting the business of government.

Indeed, the Supreme Court of Iowa in its prior decisions has recognized the county auditor as a duly constituted agent of the state and its political subdivisions in connection with the imposition of taxes, and awarded relief where the county auditor in the performance of such duties acted illegally. In *Northwestern Bank of Ireton v. Van Roekel*, 202 Iowa 237, the court had under consideration the action of the county auditor in increasing the assessment of the Northwestern Bank, a private bank, by the sum of $50,000. It held that the auditor in increasing the assessment departed from the objective of the legislature of the state to obtain substantial uniformity in the method of assessing state, national and private banks, and affirmed the judgment of the district court setting aside such additional assessment made by the county auditor. Involved in the case was the question of the taxation of costs, and in considering that portion of the district court's judgment which taxed the costs of the proceeding to the county auditor, the court said:

> "We do not think that the costs should have been taxed against the auditor personally. *He acted officially and in good faith, and under the advice of counsel.*" (Italics ours.)

And the Supreme Court of Iowa in *Fort Madison Security Company v. Maxwell*, 202 Iowa 1346, held that the county auditor of Lee County acted illegally and beyond his power in listing upon the tax list the shares of stock of the Fort Madison Security Company as "moneyed capital" when such

shares had been assessed by the assessor as "moneys and credits", and awarded relief to the Fort Madison Security Company by reason of the illegal and unauthorized act of the county auditor.

The holding of the Iowa Supreme Court that the action of the county auditor was not binding upon the State is, we submit, wholly untenable. Having delegated authority to the county auditor to prepare the tax lists, to apply the various levies to the assessed values, and to transmit the tax lists when completed to the county treasurer, who is required to collect the taxes therein shown, can it be said that the county auditor in performing this statutory duty is not an agent of the State? There can be but one answer. The auditor is a necessary and vital part of the machinery provided by the State for the assessment and collection of taxes. The auditor acts pursuant to authority granted by the State, and his action is the action of the State.

In this case, we are dealing with the restriction imposed by Section 5219 of the Revised Statutes. The Federal law is, of course, supreme and the State is wholly without authority to impose or exact taxes which exceed that limitation. The State may not set up machinery for the imposition and collection of taxes, and by means of that machinery exact taxes upon the shares of petitioner in violation of the Federal law, and then escape the obligation of making restitution by declaring that the action of the officers was not the action of the State.

IV.

In the opinion of the Supreme Court of Iowa it is said:

> "While the lawfully imposed assessments against the competing corporations stand as having been made by the same method and at the same rate as those against the plaintiffs and the right to collect them does not ap-

> pear to be barred and it is not shown that the State or its duly constituted officers do not intend to collect such taxes, it cannot be said that plaintiffs have suffered from unequal competition because the State has collected from the national banks a larger tax in proportion than it has yet collected from the competing corporations. This record falls far short of showing that unequal or unfriendly competition has been in any wise created, fostered or encouraged by the State or those charged with the administration and enforcement of the law. * * *"
> (R. 1355-1356.)

This statement is clearly erroneous and without support in the record. It is conceded by the Supreme Court that when the tax lists were prepared and certified to the treasurer for collection the discrimination complained of by petitioner existed. The opinion of the Supreme Court of Iowa holds that it is necessary not only for petitioner to establish that discrimination then existed, but also that there is no intention on the part of the officers of the State to remove that discrimination at some time in the future. It is not true that discrimination can only result from the failure of the State and its political subdivisions to *ultimately collect* taxes from all taxpayers in the same class at the same rates. Section 5219 of the Revised Statutes and the Fourteenth Amendment to the Constitution of the United States apply to the imposition of taxes as the result of an intentional, systematic, habitual, and arbitrary method or plan of the officials in charge of the enforcement of the tax laws of the State. Discrimination, forbidden by Section 5219 of the Revised Statutes and by the Constitution of the United States, results whenever the agents of the State are authorized to collect taxes at discriminatory rates.

In the instant case, in each of the four years, when the county auditor transmitted to the county treasurer the tax lists for collection, discrimination arose. The record shows that this discrimination has continued for a period of nearly

ten years, and there is neither pleading nor proof that the officers of the State have any intention of removing such discrimination by collecting, or attempting to collect, any additional taxes upon moneyed capital in competition with petitioner. Indeed, the record affirmatively shows that many of the corporations which were taxed at such grossly favorable rates have since gone out of business, sold their assets, or become merged with other corporations, and that further collection from such corporations is impossible. The rights of petitioner, guaranteed it by the Federal Statute and by the Fourteenth Amendment to the Federal Constitution, were infringed when the tax lists were lodged with the county treasurer authorizing him to collect taxes at the discriminatory rates; and to say that such federal right can now be defeated by applying the logic of the majority opinion of the Iowa Supreme Court is merely an avoidance of federal rights upon an untenable ground.

We must confess that we are surprised that such a palpably erroneous rule should be put forward by a majority of the Iowa Supreme Court, because the majority opinion itself refers to the decision of this Court in *Montana National Bank v. Yellowstone County*, 276 U. S. 499, in which the fallacy of the majority opinion of the Iowa Court is shown. In that case it appeared that in a suit by a state bank the Supreme Court of Montana construed the statutes of the state as requiring the taxation of *shares* in national banks, and the taxation of *property* of state banks. Following this rule, the taxing officers deducted all tax-exempt securities in arriving at the value of the property of the state banks, but included such securities in fixing the value of national bank shares. And thus a clear discrimination arose against the shares of national banks, which rendered the tax upon national banks invalid under the rule in *Home Savings Bank v. Des Moines*, 205 U. S. 503. Subsequently the Supreme Court of Montana held that its former decision was wrong, and that the proper

construction of the statutes required that the shares of both state and national banks be taxed. In the meantime the discrimination had arisen because the taxing officers followed the first decision. To defeat a refund it was urged that the taxing officers of the county could go back and re-assess the shares of the state banks and thus remove any possible discrimination. This Court, in the opinion by Mr. Justice Sutherland, disposed of this contention in these words:

> "But it is said that the taxing officers of the county, in view of the later decision, now have the power to tax the shares of state banks and thus bring about an equality. As to this it is unnecessary to say more than that it nowhere appears that these officers, if they possess the power, have undertaken to exercise it or that they have any intention of ever doing so. It will be soon enough to invite consideration of this purely speculative suggestion when, if ever, the taxing officials shall have put it into practical effect."

In the instant case, as in the case cited, "it nowhere appears that the officers have undertaken to exercise the power to tax the shares of competing corporations and thus bring about equality". The 1919 taxes were payable in 1920. The 1922 taxes were payable in 1923. The decision of the Iowa Supreme Court was rendered on September 26, 1930. The instant case differs from the *Yellowstone County* case in that the contention was not even advanced on behalf of the taxing officers,—it was injected into the case by the majority opinion of the Supreme Court. There is neither pleading nor proof to support the opinion, and we submit that a mere unsupported possibility that the discrimination may be, in part, removed at some time in the future is insufficient to support a denial of federal rights under the circumstances disclosed by this record.

V.

The record discloses that during the years 1919 to 1923 litigation was pending involving the amount of the assessments upon petitioner's shares and the right of the petitioner to deduct from such assessed value liberty bonds and other government securities which were exempt from taxation under the laws of the United States. The delinquent tax collector of Polk County sent to petitioner in November 1923 a statement showing taxes of $248,954.62 and penalties of $71,976.58 then due, with the notation that 6% additional penalty would be added December 1, 1923. Included in the delinquent tax collector's notice were copies of the provisions of the Iowa law giving to the treasurer the right to proceed against the delinquent taxpayer by seizure and sale of its personal property. (See R. 1401.) On November 30, 1923, the last day upon which payment could be made so as to avoid the additional 6% penalty, petitioner under written protest paid to the county treasurer the amount shown on the delinquent tax collector's statement. (See Ex. 1766, R. 1402.)

We believe that we have demonstrated that the taxes, so far as they exceeded five mills upon the dollar, were levied in violation of Section 5219 of the Revised Statutes and the Fourteenth Amendment to the Constitution of the United States. The taxes were clearly exacted under compulsion and to avoid the imposition of additional penalties. If we are correct in our position that the State and its taxing officers were without power to exact these taxes from petitioner, clearly, under the decisions of this Court, there is an obligation upon the State to make restitution. The exaction of taxes which were unlawful because levied in violation of the Fourteenth Amendment is itself a violation of the Constitution. Thus, in *Carpenter v. Shaw*, 280 U. S. 363, it appeared that a tax had been imposed upon Indian landowners against their royalty interest in petroleum and natural gas,

and the Supreme Court of Oklahoma held that the tax applied to lands which were themselves exempt from taxation in the hands of Indian allottees under the federal law. A statute of Oklahoma denied to taxpayers the right to recover taxes unless the taxes were paid at the time when due. It appeared that the Indians had paid the taxes under protest but not until after the same became delinquent. This Court, speaking by Mr. Justice Stone, there said:

> "The Supreme Court of Oklahoma also rested its denial to petitioners of the right to recover the 1926 tax upon the ground that, having failed to pay the tax for the year when due, they were barred by the provisions of Sections 9971 and 9973 of the Compiled Oklahoma Statutes for 1921. Under these sections, relief by injunction against the collection of any tax is forbidden and a suit to recover a tax alleged to be illegally assessed is allowed only if paid 'at the time and in the manner provided by law.' But the petitioners' allegations, admitted on demurrer, are that the tax was paid under duress and compulsion to prevent the issue of respondent's warrant for its collection, to prevent the stopping by respondent of further royalty payments to them, and to prevent the accumulation of statutory penalties. These allegations are sufficient to bring the case within the ruling of this court in *Ward v. Love County*, 253 U. S. 17, 64 L. Ed. 751, 40 Sup. Ct. Rep. 419, that a denial by a state court of a recovery of taxes exacted in violation of the laws or Constitution of the United States by complusion is itself in contravention of the 14th Amendment. * * *"

The case of *Ward v. Love County*, cited in the *Carpenter* case, arose under somewhat similar circumstances. The county had collected taxes upon the lands of Indian allottees which were exempt from taxation under the laws of the United States. The Supreme Court of Oklahoma denied recovery of the taxes because the money had been distributed to the various taxing districts of the state. Mr. Justice Van Devanter, speaking for the Court, said:

* * * "To say that the county could collect these unlawful taxes by coercive means, and not incur any obligation to pay them back, is nothing short of saying that it could take or appropriate the property of these Indian allottees arbitrarily and without due process of law. Of course, this would be in contravention of the 14th Amendment, which binds the county as an agency of the state."

The record discloses that petitioner paid penalties amounting to $71,976.58 in addition to the illegal taxes. It was threatened with the imposition of an additional penalty of 6% if payment was delayed another day. The taxes were exacted in violation of a federal statute and the Federal Constitution. Petitioner sought a refund of the taxes by a mandamus action, the exclusive remedy afforded it under the laws of the State as construed by the highest court. See *Steele v. Madison County*, 198 Iowa 902. If the taxes were illegal there is clearly a federal right to have them refunded. This right was erroneously denied by the decision of the court below.

VI.

In each of the years involved there were in the City of Des Moines a large number of persons, and a few foreign corporations, who were employing moneyed capital in competition with petitioner. The assessor classified and assessed this competing capital as "moneys and credits." He made up the assessment rolls and assessor's books accordingly, and returned them to the county auditor. The county auditor extended these assessments upon the tax books as "moneys and credits" and applied to them the five mill levy upon the net valuation, which resulted in a much lesser tax than if said moneyed capital had been subjected to taxation at the same rate as that imposed upon petitioner's shares. After making the assessments of moneyed capital, the assessor submitted the same to, and they were approved by the board of

review, which was composed of the city council of the City of Des Moines.

Although admitting the existence of a clear discrimination in connection with the taxation of such moneyed capital, the Supreme Court of Iowa denied to petitioner a recovery for the reason that, under its holding, petitioner was required to appear before the board of review and object to the discriminatory assessment of such moneyed capital in the hands of such large number of persons and foreign corporations, and to appeal from the action of the board of review to the District Court of Iowa. It was held that this was the exclusive remedy afforded to petitioner by the statutes of Iowa.

Under the laws of Iowa as construed by the Supreme Court, the manner of assessment and taxation of bank shares is mandatory, and the officers charged with the duty of assessing and taxing such capital act in a purely ministerial capacity. It is the mandatory duty of the assessor to fix the value of bank shares upon the basis of the statement required to be submitted by the bank correctly showing the amount of its capital, surplus, and undivided earnings. It is the mandatory duty of the auditor to apply the consolidated millage tax to 20% of such assessed value. None of the officers are charged with any discretion in the taxation of the stock of state and national banks. Under the decisions of the Iowa Supreme Court neither the assessor nor the Board of Review possessed the power to assess petitioner's shares as "moneys and credits", and a resort to the board of review, so far as the assessment upon petitioner's shares is concerned, would have been utterly futile.

In the case of *First National Bank of Remsen v. Hayes, County Auditor*, 186 Iowa 892, the assessor had allowed certain deductions from the assets which affected the assessed value of the bank's shares. The auditor corrected the assessments. The Iowa Supreme Court, in discussing the power of the assessor and auditor, said:

"Enough has been said to indicate that the duty performed by the assessor in ascertaining the value of bank stock is merely ministerial in its nature. All exacted of him is accurate computation. In estimating the value of other property, he is required to determine its value according to his best judgment, and therein exercises a *quasi-judicial* function. See *Talley v. Brown*, 146 Iowa 360. A ministerial act has been defined as 'one which a person or board performs upon a given state of facts, in a prescribed manner, in observance of the mandate of legal authority, and without regard to or the exercise of his own judgment upon the propriety of the act being done.' * * *

"Here, the assessor is merely required to make computation from the statements furnished him, and must have, in the performance of his duty as assessor, assessed the shares of stock in the bank in accordance with computations actually made, and therein performed purely ministerial duties; and he should have assessed the bank stock in accordance with such computation. Whether he made a mistake in computation or undertook to exercise his judgment in ascertaining the value of the shares of stock is not material. In either event, the error in the assessment was such as contemplated in Section 1385-b of the Code Supplement, 1913, and the auditor acted within his authority in making the corrections."

In *Avoca State Bank v. Burke, County Auditor*, 193 Iowa 1055, it appeared that the assessor and board of review had allowed certain deductions from the assessed value of the shares on account of what was designated as "reserve for doubtful paper." This reserve was not reflected on the books of the bank, but was claimed by the bank in a letter which accompanied the tax statement. The auditor corrected the assessment upon the shares by rejecting the deduction allowed by the assessor, and fixed the assessment at the total capital, surplus, and undivided profits of the bank as required by statute. The Iowa Supreme Court said:

"* * * While it is doubtless true that the board of review could have corrected the error if it had discovered it, yet the failure of the board of review to correct the erroneous item did not validate it. If the assessor lacked the power to approve it as a deduction, it necessarily followed that the board of review lacked power also. We must hold, therefore, that the county auditor did have power to strike out the item. It follows that the order of the district court must be reversed. * * *"

See also *First National Bank of Council Bluffs v. Burke, County Auditor*, 196 N. W. 287, wherein the Iowa Supreme Court said:

"* * * It must be remembered that we are dealing with a mandate found in legislative enactment. The assessments in question are mandatory. Nothing is left to the discretion or judgment of the assessor, board of review, or taxing official. Nothing is left to any subordinate body to determine in what amount, against whom it shall be levied, or the manner or method of making the assessment and the apportionment. The statute itself fixes and determines the base of the assessment, and consequently any correction is mathematical and purely ministerial in its character. The bank itself furnishes the verified statement disclosing the data specified in the statutory requirement. The statute leaves nothing for the assessor or the board of review to do, except to correctly compute the percentage of each shareholder. It is a problem in arithmetic, and the elements or factors of the problem are furnished by the bank. The statute prescribes the method in the solution of the problem."

Under these decisions of the highest court of Iowa it is clear that neither the assessor, the board of review, nor the District Court on appeal therefrom, possessed any power to assess the shares of petitioner as "moneys and credits". The decision in the instant case declares that the remedy provided by Sec. 7235 is not available to petitioner, in so far as the assessment of competing capital owned by individuals as contra-distinguished from the stock of competing do-

mestic corporations is concerned, but that petitioner in such respect was remitted to an appearance before the local board of review. The decision of the Iowa Court in this case does not point out what relief the board of review could have accorded petitioner under the former decisions which we have cited. It merely declares that as to the moneyed capital assessed as "moneys and credits" petitioner's remedy of appearance before and appeal from the board of review was exclusive. We have seen that under the previous pronouncements of the Iowa Court, complaint to the board of review with a demand that petitioner's shares be assessed as "moneys and credits" would have been absolutely futile. If the Supreme Court of Iowa, by its decision means to say that petitioner had a remedy by appearance before the board and complaint as to the assessment of its own shares as "corporation stock" it is apparent that the petitioner was required to do a futile thing. Indeed the situation in which petitioner would be placed would be identical with that of the plaintiff in *Montana National Bank v. Yellowstone County*, 276 U. S. 499 from which we have already quoted in the argument.

There, it will be remembered, discrimination against the shares of a national bank arose because the law as originally construed by the highest court of the state, required the taxation of *shares* of national banks and the taxation of *property* of state banks, thus allowing state banks to escape taxation upon their tax exempt securities, which privilege was denied to national banks. When a national bank sought a refund of the taxes upon its shares because of this discrimination the Montana Supreme Court reversed itself, declaring the previous decision erroneous. It was also urged that petitioner in that case should have availed itself of an administrative remedy by appearance before the assessing board. This argument was promptly overruled by this

court. We quote from the opinion of Mr. Justice Sutherland:

> "Finally, it is urged that plaintiff in error may not maintain this action because of its failure to apply to the county board of equalization for an administrative remedy. We do not stop to inquire whether under any circumstances such remedy was open to the taxpayer, for the short answer is that the decision of the Supreme Court of Montana in the *Rogers* case would have rendered any such application utterly futile since the county board of equalization was powerless to grant any appropriate relief in the face of that conclusive decision. See *Hills v. National Albany Exch. Bank*, 105 U. S. 319, 321, 26 L. ed. 1052, 1053; *Whitbeck v. Mercantile Nat. Bank*, 127 U. S. 193, 199, 32 L. ed. 118, 120, 8 Sup. Ct. Rep. 1121."

The application to the instant case is clear and needs no further extended discussion. None of the decisions of the Iowa Supreme Court cited in the opinion had been handed down when the assessments were being made, nor when petitioner paid its taxes in November 1923. Nor has the Iowa court ever overruled its pronouncements to the effect that the statues of the state make it the mandatory duty of the assessor and board of review to assess the shares of petitioner as "corporation stock" or personal property. We say therefore that this case is "on all fours" with the Montana case, and that the decision of the Court below that petitioner had an available remedy by appeal from the board of review will not support a denial of a refund of taxes which were concededly levied in violation of Section 5219 of the Revised Statutes.

While it has never yet been suggested during the history of this litigation it may be urged that petitioner had an adequate remedy by appearance before the board of review and complaint to that body as to the improper assessments upon the moneyed capital assessed as "moneys and credits".

The opinion of the Iowa court does not indicate that it was intended to adopt such a construction, but as the same may be urged by counsel for respondents we shall next give some attention thereto. Section 1373 Code Supplement 1913, now Section 7135 Code of 1927, which was in force at the times the matters in controversy arose, is as follows:

"Complaint to board of review—appeal. Any person aggrieved by the action of the assessor in assessing his property may make oral or written complaint thereof to the board of review, which shall consist simply of a statement of the errors complained of, with such facts as may lead to their correction, and any person whose assessment has been raised or whose property has been added to the assessment rolls, as provided in the preceding section, shall make such complaint before the meeting of the board for final action with reference thereto, as provided in said section, and appeals may be taken from the action of the board with reference to such complaints to the district court of the county in which such board holds its sessions, within twenty days after its adjournment. Appeals shall be taken by a written notice to that effect to the chairman or presiding officer of the reviewing board, and served as an original notice. The court shall hear the appeal in equity and determine anew all questions arising before the board which relate to the liability of the property to assessment or the amount thereof, and its decision shall be certified by the clerk of the court to the county auditor, who shall correct the assessment books in his office accordingly. Any officer of a county, city, town, township or school district interested or a taxpayer thereof may in like manner make complaint before said board of review in respect to the assessment of any property in the township, city or town and an appeal from the action of the board of review in fixing the amount of assessment on any property concerning which such complaint is made, may be taken by any of such aforementioned officers. Such appeal is in addition to the appeal allowed to the person whose property is assessed and shall be taken in the name of the county, city, town, township or school district interested and tried in the same manner, except that the notice of

appeal shall also be served upon the owner of the property concerning which the complaint is made and affected thereby or person required to return said property for assessment. Upon trial of any appeal from the action of the board of review fixing the amount of assessment upon any property concerning which complaint is made, the court may increase, decrease or affirm the amount of the assessment appealed from. (32 G. A. ch. 60, Sec. 1; 18 G. A. ch. 109 Sec. 1; C. '73, Sec. 831; R. Sec. 740.)"

This section it will be readily seen by its terms merely gives to "any officer of a county, city or town or a taxpayer the right to make complaint before said board of review in respect to the assessment of any property in the township, city or town, and an appeal from the board of review in fixing *the amount of assessment on any property concerning which such complaint is made, may be taken by any of such aforementioned officers.*" A taxpayer may make complaint but he has no right of appeal except as to his own property. The only person who can take an appeal in such case is the "*officer*" of the city or town. Is the existence of such a remedy as disclosed by the statute which we have quoted a sufficient basis for denying to petitioner a refund of taxes and penalties exacted of it by compulsion in violation of the laws and Constitution of the United States? We desire to call the attention of the Court to the situation in which petitioner was placed when the board of review was in session.

The record shows that there were several thousand assessments upon individuals, foreign corporations and copartnerships which had been made by the assessor as "moneys and credits". These assessments included real estate contracts, purchase money mortgages, open accounts, money on deposit in banks, currency, judgments, liens, bills of exchange, and choses in action, as well as notes, bonds and mortgages evidencing loans of the taxpayer's funds in competition with the business of petitioner. They were all

mingled upon the assessment rolls so that it was impossible to determine which items should have been assessed as "moneyed capital" and which were properly assessed as "moneys and credits". An extended investigation as to the property returned on each assessment roll was necessary before it could be said that an improper assessment had been made as "'moneys and credits". The time fixed by the statutes of Iowa for the taxpayer to make complaint before the board was but a few days, (in fact the Board of Review could not exist for more than thirty days under the statutes of the State). The Supreme Court of Iowa had held that a taxpayer coming before the board for relief must state his grievance with

> "sufficient particularity, and must specify his complaint with such certainty as to enable the tribunal, supposing it to possess ordinary intelligence to comprehend and understand the matters of which complaint is made, and to grant the particular relief sought for in the complaint. He is not entitled to have any question determined on appeal except such as he called the tribunal to determine in the first place."
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> *First National Bank v. City of Council Bluffs*, 182 Iowa, 107.

The board of review, composed of the members of the City Council of the city, was not a judicial body. It had no power to issue subpoenas, require the attendance of witnesses, nor require the production of books or papers of the taxpayers assessed on the moneys and credits basis. The competitors of petitioner who were escaping more than 80 per cent of the taxes which they should pay would not of course volunteer testimony in aid of petitioner. It was neither practical nor possible for petitioner to have searched out, learned and stated to the city council, within the time required by statute, the errors of which they complained with the necessary facts which would lead to their correction—

much less to have had the city council determine the question.

In *Munn v. Des Moines National Bank, supra,* which involved the taxation of bank shares in the same taxing district for the same years as in this case, it was urged before the Circuit Court of Appeals that the plaintiff in that action had an adequate remedy, under the laws of Iowa by appearance before and appeal from the board of review, and so was not entitled to equitable relief in the Federal Courts. The contention was declared without foundation in the opinion by Circuit Judge Sanborn who examined the record with great care. We quote the following from the opinion in the *Munn* case:

> "They rely on the proposition that a taxpayer must exhaust his remedies under the administrative boards before he may have relief by a judicial tribunal and cite many authorities, including *First National Bank v. Weld County,* 264 U. S. 450, 44 S. Ct. 385, 68 L. Ed. 784, and *Griswold Land & Credit Co. v. County of Calhoun,* 198 Iowa, 1240, 201 N. W. 11, two opinions perhaps as favorable to their view as any to which they call attention.
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> In each of these cases the property of the complainants had been illegally assessed and taxed too high, and that fact was shown by the public records of which the complainants had legal notice at such times that they could have availed themselves of the remedy offered by the statutes of the state through the administrative boards. It was not so with the shareholders of these banks and the banks themselves. Their grievances were that the property of other taxpayers, taxpayers in whose hands was property that they had used and were using during the years in question in competition with the normal business of these banks, was by the taxing officers illegally taxed too low. That fact, however, did not appear upon the face of any of the public records, because those records did not separate the taxpayers who had used and were using their moneyed capital in competition with the normal business of these banks from those who had not done and were not doing so, and

time, search, and extended investigation after the amounts of the taxes in each year were fixed and disclosed by the public records were indispensable to the discovery and statement of their names and their competing property.

Section 1373 of the Code Supplement of Iowa of 1913 required any person aggrieved by the taxation of his or its property to make an oral or written complaint, which should consist "of a statement of the errors complained of, with such facts as may lead to their correction, * * * before the meeting of the board for final action with reference thereto." The assessment books in each of these years were not completed so that a taxpayer could know what the amounts of his assessments and taxes were until within a few days before the final action of the board of review with reference thereto. The time fixed by the statute for a taxpayer to make his statement to the board of review of the errors he complained of with such facts as might lead to their correction was only a few days. It was a very short time. The Supreme Court of that state had held that the taxpayer coming before the board of review for relief must state his grievance "with sufficient particularity and must specify his complaint with sufficient certainty to enable the tribunal, supposing it to possess ordinary intelligence, to comprehend and understand the matters of which complaint is made, and to grant the particular relief sought for in the complaint. He is not entitled to have any question determined on appeal, except such as he called upon the tribunal to determine in the first place." *First National Bank v. City of Council Bluffs*, 182 Iowa, 107, 112, 113, 161 N. W. 706, 708.

The record in these cases before us shows that the number of instances in which the complainants in this court claim that moneyed capital in the hands of individuals taxable in the county was used in competition with the normal business of these banks and had been illegally taxed at the five mills' rate in the years under consideration was in the hundreds; that the value of the property that they claimed had been thus illegally taxed was more than $6,000,000; that the number of items of such moneyed capital so taxed was many hundreds. The number of witnesses presented to the court below in the hearing of these cases was more than 150. The testi-

mony was condensed and appears in narrative form, and the printed pages of the record are 599. The tribunal to which these banks must present all their alleged errors and complaints, "with such facts as may lead to their correction" (section 1373), was the city council of the city of Des Moines. The Supreme Court of Iowa had declared that, on an appeal from the board of review to the court from the action of this city council, the complainants would not be "entitled to have any question determined on appeal, except such as he called upon the tribunal (board of review) to determine in the first place." 182 Iowa, 112, 113, 161 N. W. 708.

The city council of Des Moines was not a judicial body. The competitors of these banks and their shareholders that had escaped four-fifths to five-sixths of the taxes they should have paid and their employees were not very likely to volunteer testimony or evidence to sustain the claims of these banks, and the city council had no power to issue subpoenas to compel them to testify. It does not seem to us to have been either practical or possible for the shareholders of these banks, or the banks themselves, to have searched out, learned, and stated to this city council within the times required by section 1373 the errors of which they complained "with such facts as may lead to their correction" (section 1373), much less to have had the city council so determine the questions they present that the complainants could have obtained through the proceeding authorized by section 1373 any just or adequate remedy for the grievances they have presented. In our opinion the facts of these cases, some of which have now been recited, clearly except them from the operation of the proposition that they must exhaust their remedy before the administrative board, because that remedy was not only inadequate but necessarily impractical and futile, and the court below had plenary jurisdiction in equity to hear and decide the questions in these cases and to grant adequate relief to the complainants."

The trial of this case in the District Court consumed more than sixteen weeks and more than one hundred and fifty witnesses were called upon behalf of petitioner. To say that petitioner's exclusive remedy under the laws of

Iowa to produce all the facts with reference to the ownership and use of moneyed capital by the hundreds of individual taxpayers who were assessed upon "moneys and credits" is to impose upon petitioner an impossible obligation; an obligation which, in the very nature of the case could not be met within the time required. The remedy which the Iowa Supreme Court declares was the exclusive remedy available to petitioner as to the "moneyed capital" improperly assessed as "moneys and credits" was therefore impractical and futile, and amounted to no remedy at all.

This court has consistently held that when the laws of a State, as construed by the highest court require a taxpayer to resort to a remedy which is utterly futile or unavailing it will be held the equivalent of no remedy at all. Such a law violates both the due process and equal protection clauses of the Fourteenth Amendment.

We have already seen that petitioner had no right to appeal from the determination of the Board of review with respect to the assessments of others on the moneys and credits basis. This action could only be taken by some public officer. But even if such remedy may be said to be available to a taxpayer in the position in which petitioner found itself, to impose such a requirement violates the equal protection and due process clauses of the Fourteenth Amendment. Thus in *Sioux City Bridge Co. v. Dakota County*, 260 U. S. 441, it appeared that the property of the Bridge Company was assessed at 90 to 100 per cent of actual value while other property generally was systematically taxed at but 50 per cent of actual value. The Supreme Court of Nebraska held that the taxpayer's exclusive remedy was to prosecute appeals from the action of the administrative tribunal, in each case where property had been systematically undervalued. This Court speaking by the late Chief Justice Taft said:

"The supreme court does not make it clear whether it thinks the discrimination charged was proved or not, but, assuming the discrimination, it holds that the Bridge Company has no remedy except "to have the property assessed, below its true value raised, rather than to have property assessed at its true value reduced." The dilemma presented by a case where one or a few of a class of taxpayers are assessed at 100 per cent of the value of their property, in accord with a constitutional or statutory requirement, and the rest of the class are intentionally assessed at a much lower percentage, in violation of the law, has been often dealt with by courts, and there has been a conflict of view as to what should be done. There is no doubt, however, of the view taken of such cases by the Federal courts in the enforcement of the uniformity clauses of state statutes and constitutions, and of the equal protection cause of the 14th Amendment. The exact question was considered at length by the circuit court of appeals of the sixth circuit in the case of *Taylor v. Louisville & N. R. Co.*, 31 C. C. A. 537, 60 U. S. App. 166, 88 Fed. 350, 364, 365, and the language of that court was approved and incorporated in the decision of this court in *Greene v. Louisville & Interurban R. Co.*, 244 U. S. 499, 516-518, 61 L. ed. 1280, 1289, 1290, 37 Sup. Ct. Rep. 673, Ann. Cas. 1917E, 88. The conclusion in these and other Federal authorities is that such a result as that reached by the supreme court of Nebraska is to deny the injured taxpayer any remedy at all because it is utterly impossible for him, by any judicial proceeding, to secure an increase in the assessment of the great mass of underassessed property in the taxing district. This court holds that the right of the taxpayer whose propery alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed, even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. In substance and effect, the decision of the Nebraska supreme court in this case upholds the violation of the 14th Amendment to the in-

jury of the Bridge Company. We must, therefore reverse its judgment."

Taylor v. L. & N. Railroad Co., 88 Fed. 350, involved a case of systematic undervaluation of real and personal property by the taxing authorities and the taxation of the property of a Railroad Company at substantially full value. It is there said:

> "It is said on behalf of the defendants that the only method consistent with the constitution is by raising the assessments of the real and personal property. This is no remedy at all. It has been suggested (but we cannot regard the suggestion as a serious one) that the railroad companies of the state should go before the taxing authorities of each county, and, after notifying each taxpayer, attempt to secure an increase in the total tax assessment of the real and personal property of the state from $312,000,000 to $416,000,000. The absolute futility of such a course, the enormous expense, and the length of time necessary in attempting to follow it, need no comment."

During the years 1920 to 1922 inclusive, the moneyed capital which was improperly *assessed* and taxed as "moneys and credits" comprised only about twenty-five per cent of the total amount of moneyed capital shown by the evidence. The balance consisted, as we have seen, of shares in competing corporations which were assessed upon the same basis as the shares of petitioner, but as to which the discrimination arose because of the deliberate and systematic acts of the county auditor, in applying the five mill rate thereto. In the year 1919 the moneyed capital assessed as "moneys and credits" was only about forty per cent of the total. In all four of the years there was a substantial and material amount of such capital assessed upon a basis of equality with the shares of petitioner, but taxed at discriminatory rates. The points considered in this division of

the argument are therefore not decisive of the case, even though petitioner's contention be overruled.

We submit, however, that the decision of the Iowa Supreme Court as to this branch of the case is unsound, and that the laws of Iowa, as construed by the highest court of the State in the opinion below, deny to petitioner any remedy at all as to the moneyed capital assessed as "moneys and credits". In this respect the Iowa law is necessarily invalid because in conflict with the laws and Constitution of the United States. We again respectfully call the attention of this court to the rules laid down in *Ward v. Love County* and *Carpenter v. Shaw, supra,* wherein this court holds that taxes exacted in violation of the law and Constitution of the United States by compulsion may be recovered back, and that to deny such right is in itself a violation of the Fourteenth Amendment. The decision of the Court below denies petitioner a Federal right on the ground of the existence of an administrative remedy, which as we have shown was not open to petitioner, and therefore constitutes a denial of the Federal rights asserted. The opinion of the Iowa Court on this branch of the case is in conflict with the decisions of this Court and should be reversed.

VII.

The Des Moines National Bank, Bankers Trust Company, and the Iowa Loan and Trust Company were in each of the years from 1919 to 1922, inclusive, engaged in the general banking business in the city of Des Moines, Polk County, Iowa. Early in 1923 each of these banks instituted in the United States District Court for the Southern District of Iowa suits against the County Treasurer of Polk County, Iowa, seeking writs of injunction against the collection of more than five mills on the dollar of valuation, placed upon their respective shares of stock, as taxes for each of said

years. The allegations upon which such relief was sought were substantially identical with the allegations involved in this case as is apparent from the bill of complaint in that case which was introduced in evidence here, and appears in the record at Page 825. The defendant there was represented by the Attorney-General of the state, by the Corporation Counsel of the City of Des Moines, by the special counsel of the board of supervisors of Polk County, and the expense of the litigation was borne by the board of supervisors of Polk County. Issues were joined and testimony taken before a Master, who made a report of his findings, specifically finding among other things that there was in Polk County, Iowa in each of said years 1919 to 1922, inclusive, a relatively large and substantial amount of moneyed capital within the meaning of Section 5219 of the Revised Statutes of the United States, which was subjected to taxation at only five mills on the dollar of assessed valuation; that such moneyed capital was so subjected to taxation at such rate as the result of a systematic, intentional and habitual plan or course of conduct on the part of the taxing officials of Polk County, Iowa, while at the same time the shares of stock of the plaintiffs in said suits were subjected to taxation at the consolidated levy rate applied to twenty per cent (20%) of the assessed value of their shares of stock. Exceptions were taken to the Master's report, and upon being heard, were overruled and decree and judgment in favor of the plaintiffs therein was entered. Whereupon an appeal was perfected for Allen Munn, as County Treasurer of Polk County, Iowa to the Circuit Court of Appeals of the Eighth Circuit, the board of supervisors of Polk County defraying the expenses of such appeal. Such appeal was submitted to and decided by the Circuit Court of Appeals, the decision resulting in the affirmance of the judgment and decree of the District Court. The opinion of the Circuit Court of Appeals and its mandate were introduced in evidence in this

case. (Record 975.) The opinion appears in 18 Federal, 2d Series, 269. The decision of the Circuit Court of Appeals became final, and the Des Moines National Bank and the Bankers Trust Company paid taxes at the rate of five mills on the dollar of assessed valuation for each of the years 1919 to 1922, inclusive. Prior to paying taxes for such years, the Iowa Loan and Trust Company was placed in the hands of a receiver and has never paid any taxes for those years.

We have then a situation where, by virtue of the construction placed upon the acts of the taxing officials of the State of Iowa and its political subdivisions, in the identical taxing district, for the very same years involved in these cases, the shares of stock of three institutions engaged in commercial banking in the City of Des Moines in direct competition with the petitioner in each of said years were subjected to taxation at only five mills on the dollar of assessed valuation, while the shares of stock of the petitioner were subjected to taxation at from five to more than six times that rate in said years. There can be no question of the finality and conclusiveness of the judgment in the case of *Munn v. Des Moines National Bank, et al., supra,* as between the parties thereto. By virtue of the lapse of time no further review could possibly be had in those cases. Indeed, pursuant to such judgment the taxing officials of the state and its political subdivisions have accepted, received and receipted for taxes from those institutions for the years involved in this case on the basis of five mills on the dollar. Now, when it is known that the same parties who are defendants in these actions not only were aware of the pendency of that litigation, but actually assumed, conducted and bore the expense of the defense of that suit, surely there can be no escape from the conclusion that they are bound by the findings and the decision in those cases, and that such are conclusive in this case. That those cases involved a Federal question is be-

yond any sort of dispute, and involving Federal questions, the decisions of the United States Courts when final are binding, and must be followed by the courts of Iowa. Indeed, the Iowa Supreme Court in *Des Moines National Bank v. Fairweather*, 191 Iowa, at Page 1244, speaking by Mr. Justice Evans, recognized this rule and there said:

> "Such also is the holding of the Federal courts, whose precedents are obligatory upon us upon this question. See *Hannan v. First National Bank*, 269 Fed. 527. The cited case was decided very recently by the Federal Circuit Court of Appeals for this Circuit. It reveiws the previous cases with great care, and holds squarely that there is no conflict between Section 5219 of the Revised Statutes of the United States and Section 1322 of the Code of Iowa.
>
> In view of this pronouncement, it is quite needless that we enter into argument on this feature of the case. Following the Federal holding in the *Hannan* case, we must hold that the first six grounds of complaint set forth in plaintiff's petition must each and all be overruled."

Further, the Iowa Court, in speaking to the question of privity of defendants and the binding effect of a previous judgment upon a defendant in a subsequent case, has said:

> "One who, though not a party, defends or prosecutes an action by employing counsel, paying costs, and doing those things which are generally done by a party, is bound by the judgment rendered therein. *Stoddard v. Thompson*, 31 Iowa, 80; *Marsh v. Smith*, 73 Iowa, 295."

And again, where as here, the judgment claimed to be conclusive was rendered against a political subdivision of a State or its legal representatives, it was held:

> "A judgment against a County or its legal representatives in a matter of general interest to all the people thereof, as one respecting the levy and collection of taxes, is binding not only as against the official repre-

sentatives of the County named in the proceeding as defendants, but upon all the citizens thereof, though not made parties defendant by name."

Cannon v. Nelson, 83 Iowa 242."

So, we assert that because of the binding effect of the judgment in the case of *Munn v. Des Moines National Bank, et al.* upon the respondents in this case, petitioner was entitled to judgment as prayed.

But we desire the Court to consider the effect of the judgment in the case of *Munn v. Des Moines National Bank, et al., supra*, from another aspect.

That case, as we have shown, involved the taxation of the shares of stock of the Des Moines National Bank, the Bankers Trust Company, and the Iowa Loan and Trust Company, during the years 1919 to 1922 inclusive, which are the same years as are involved in this case. Each of those institutions was engaged in the commercial banking business in Des Moines, Iowa, the location of the business of petitioner. There were involved in those cases Federal questions, namely: the violation through the method of taxation employed by the taxing officials of the State of Iowa and its political subdivisions of the provisions of Section 5219 of the Revised Statutes of the United States, and of the constitutional rights of the plaintiffs in those cases. These Federal questions were resolved in favor of the plaintiff banks in those cases, and the decision of those cases is a finality. So final was the decision that the taxes which were ultimately exacted from the plaintiffs therein was at the rate of only five mills on the dollar of assessed valuation in each of the years involved. There can be no question of the right of the Federal courts to have decided the Federal questions presented by those cases, nor of the fact that the Federal courts of final resort did decide those questions, and the decision was in favor of the plaintiff banks, who were direct active banking competitors of the petitioner. The de-

cision and judgment in those cases became binding upon the parties thereto and upon everyone else, for that judgment, being a finality, could not be further reviewed. So here we have the taxation in the years 1919 to 1922, inclusive, of the shares of stock of a national and two state banks which were in direct banking competition with the appellants at the rate of five mills on the dollar of assessed valuation. True, this taxation was influenced by and the result of the final decision of the United States Courts, but it was none the less real, and this does not alter the fact that shares of stock of competing banks in Des Moines were taxed at five mills on the dollar in the years involved in this suit, nor was such result any more brought about by the decision of a Federal question than was the result of the application of the decision of *Home Savings Bank v. Des Moines*, 205 U. S. 503, to the case of *First National Bank of Estherville v. City Council*, 150 Iowa 95, where it was held that the holding in the former case was final and conclusive in the latter because it was the final decision of a Federal right by the United States Courts. Such being the state of the law as announced by these decisions, and such being the facts as to which there can be no dispute, we insist that petitioner was entitled to the relief sought.

CONCLUSION.

As we have seen it was established beyond controversy, and the opinion of the court below concedes that during the four years in question there existed in Des Moines, Iowa, large and relatively material amounts of moneyed capital in the form of shares of corporations engaged in the loan and investment business and in the form of moneyed capital in the hands of foreign corporations, co-partnerships and individuals. That this moneyed capital was deliberately, systematically, habitually and intentionally taxed at but five

mills on the dollar is clearly established. That such taxation was pursuant to a system, plan or method deliberately adopted by the taxing officers of the State is likewise clear and undisputed.

The Supreme Court of Iowa denied to petitioner the relief sought on the ground that the county auditor of Polk County, while a duly elected public official, acting in pursuance of the duties enjoined upon him by the statutes of the State, was a mere usurper of authority. We think we have demonstrated that this claim is untenable. Relief was likewise denied to petitioner, because, while it was shown that a gross discrimination prohibited by the laws and Constitution of the United States occurred during all of the four years, petitioner did not show that the taxing officers had no intention of removing such discrimination at some time in the future. This pronouncement of the Supreme Court seems little short of absurd in view of the fact that nearly ten years had elapsed since the taxes became payable, and there was neither pleading nor proof that the taxing officers intend to even attempt the collection of further taxes upon the great mass of competing moneyed capital, which has escaped more than 80 per cent of the taxes which it should have borne during the years involved.

The taxes upon the shares of petitioner were exacted by compulsion in violation of Section 5219 of the Revised Statutes and in violation of the Fourteenth Amendment to the Constitution of the United States. The majority opinion of the court below in denying to petitioner a refund of the grossly discriminatory taxes thus illegally exacted of it is, as we have seen based upon wholly untenable grounds. We submit that petitioner has shown that it is entitled to a refund of all taxes upon its shares of stock during the years 1919 to 1922 inclusive; in excess of five mills upon the dollar, and that the majority opinion of the Iowa Supreme Court denying such refund is in conflict with the decisions

of this Court and denies petitioner rights guaranteed under the Statutes and Constitution of the United States. It follows that the case should be reversed, with directions to the Supreme Court of Iowa to enter such order or decree as may secure to petitioner the Federal rights to which it is entitled.

Respectfully submitted,

J. G. GAMBLE,

A. B. HOWLAND,

Counsel for Petitioner.

APPENDIX.

The following are the statutes of Iowa so far as material to this appeal, involving the procedure as to the assessment and collection of taxes.

SECTION 1310, 1913 SUPPLEMENT.

—MONEYS—CREDITS—ANNUITIES—BANK NOTES—STOCK.—Moneys, credits and corporation shares or stocks, except as otherwise provided, cash, circulating notes of national banking associations, and United States legal tender notes, and other notes, and certificates of the United States payable on demand, and circulating or intended to circulate as currency, notes, including those secured by mortgage, accounts, contracts for cash or labor, bills of exchange, judgments, choses in action, liens of any kind, securities, debentures, bonds other than those of the United States, annuities, and corporation shares or stocks not otherwise taxed in kind, shall be assessed, and, excepting shares of stock of national, state and savings banks and loan and trust companies, and moneyed capital as hereinafter defined, shall be taxed upon the uniform basis throughout the state of five mills on the dollar of actual valuation, same to be assessed and collected where the owner resides. The millage tax here provided for shall be in lieu of all other taxes upon moneys and credits and shall be levied by the board of supervisors, placed upon the tax list and collected by the county treasurer, and the amount collected in the various taxing districts of the state shall be divided between the various funds upon the same *pro rata* basis as other taxes collected in such taxing district are apportioned. All moneyed capital within the meaning of section fifty-two hundred nineteen of the revised statutes of the United States shall be listed and assessed against the owner

thereof at his place of business, and if a corporation at its principal place of business, at the same rate as state, savings, national bank and loan and trust company stock is taxed, in the same taxing district, and at the actual value of the moneyed capital so invested. The person or corporation using moneyed capital in competition with bank capital shall furnish the assessor upon demand a full and complete itemized sworn statement showing the amount of moneyed capital so used.

SECTION 1322, 1913 SUPPLEMENT.

NATIONAL, STATE AND SAVINGS BANKS—REFUSAL TO COMPLY WITH STATUTE—PENALTY.—Section thirteen hundred twenty-two of the supplement to the code, 1907, is hereby repealed and the following enacted in lieu thereof:

"Shares of stock of national banks and state and savings banks, and loan and trust companies, located in this state, shall be assessed to the individual stockholders at the place where the bank or loan and trust company is located. At the time the assessment is made the officers of national banks and state and savings banks and loan and trust companies shall furnish the assessor with lists of all the stockholders and the number of shares owned by each, and the assessor shall list to each stockholder under the head of corporation stock the total value of such shares. To aid the assessor in fixing the value of such shares, the said corporation shall furnish him a verified statement of all the matter provided in section thirteen hundred twenty-one of the supplement to the code, 1907, which shall also show separately the amount of the capital stock and the surplus and undivided earnings, and the assessor from such statement shall fix the value of such stock based upon the capital, surplus, and undivided earnings. In arriving at the total value of the shares of stock of such corporations, the amount of their capital actually in-

vested in real estate owned by them and in the shares of stock of corporations owning only the real estate (inclusive of leasehold interests, if any,) on or in which the bank or trust company is located, shall be deducted from the real value of such shares, and such real estate shall be assessed as other real estate, and the property of such corporation shall not be otherwise assessed. A refusal to furnish the assessor with the list of stockholders and the information required under this section shall be deemed a misdemeanor and any bank or officer thereof so refusing shall be punished by a fine not exceeding five hundred dollars."

SECTION 1322-1a, 1913 SUPPLEMENT.

BANK STOCKS—MONEYED CAPITAL—TAXABLE VALUE.—For the purpose of placing the taxation of bank and loan and trust company stock and moneyed capital as nearly as possible upon a taxable value relatively equal to the taxable value at which other property is now actually assessed throughout the state as compared with the actual value thereof, it is hereby provided that state, savings and national bank stock and loan and trust company stock and moneyed capital shall be assessed and taxed upon the taxable value of twenty per cent of the actual value thereof, determined as herein provided, which twenty per cent of the actual value shall be taken and considered as the taxable value and shall be taxed as other property in such taxing district.

CODE SUPPLEMENT OF 1913—SECTION 1373:

"Complaint to board of review—appeal. Any person aggrieved by the action of the assessor in assessing his property may make oral or written complaint thereof to the board of review, which shall consist simply of a statement of the errors complained of, with such facts as may lead to their correction, and any person whose assessment has been raised or whose property has

been added to the assessment rolls, as provided in the preceding section, shall make such complaint before the meeting of the board for final action with reference thereto, as provided in said section, and appeals may be taken from the action of the board with reference to such complaints to the district court of the county in which such board holds its sessions, within twenty days after its adjournment. Appeals shall be taken by a written notice to that effect to the chairman or presiding officer of the reviewing board, and served as an original notice. The court shall hear the appeal in equity and determine anew all questions arising before the board which relate to the liability of the property to assessment or the amount thereof, and its decision shall be certified by the clerk of the court to the county auditor, who shall correct the assessment books in his office accordingly. Any officer of a county, city, town, township or school district interested or a taxpayer thereof may in like manner make complaint before said board of review in respect to the assessment of any property in the township, city or town and an appeal from the action of the board of review in fixing the amount of assessment on any property concerning which such complaint is made, may be taken by any of such aforementioned officers. Such appeal is in addition to the appeal allowed to the person whose property is assessed and shall be taken in the name of the county, city, town, township or school district interested and tried in the same manner, except that the notice of appeal shall also be served upon the owner of the property concerning which the complaint is made and affected thereby or person required to return said property for assessment. Upon trial of any appeal from the action of the board of review fixing the amount of assessment upon any property concerning which complaint is made, the court may increase, decrease or affirm the amount of the assessment appealed from. (32 G. A. ch. 60, Sec. 1; 18 G. A. ch. 109, Sec. 1; C. '73, Sec. 831; R. Sec. 740.)"

SECTION 1383, 1913 SUPPLEMENT.

TAX LIST.—All taxes, except road taxes, which are uniform throughout any township or school district shall be formed into a single tax, and entered upon the tax list in a single column, to be known as a consolidated tax, and each receipt shall show the percentage levied for each separate fund. Before the first day of January in each year, the county auditor shall transcribe the assessments of the several townships, towns or cities into a book, to be provided at the expense of the county for that purpose, to be known as the tax list, properly ruled and headed, with distinct columns, in which shall be entered the names of taxpayers, descriptions of lands, number of acres and value, number of town lots and value, value of personal property and each description of tax, with a column for polls and one for payments, and shall complete the same by carrying out the totals and footings of columns. At the end of the list of each township, town or city he shall make an abstract thereof, and apportion the consolidated tax among the respective funds to which it belongs, according to the number of mills levied for each.

SECTION 1385-B, 1913 SUPPLEMENT.

ERRORS CORRECTED—OMITTED PROPERTY.—The auditor may correct any error in the assessment or tax list, and may assess and list for taxation any omitted property; but before assessing and listing for taxation any omitted property he shall notify by registered letter the person, firm, corporation, or administrator, or other person in whose name the property is taxed, to appear before him at his office within ten days from the time of said notice and show cause, if any there be, why such correction or assessment should not be made, and should such party feel aggrieved at the ac-

tion of said auditor he shall have the right of appeal therefrom to the district court. And if such correction or assessment is made after the books have passed into the hands of the treasurer he shall be charged or credited therefor as the case may be. All expense incurred in the making of said correction or assessment shall be borne *pro rata* by the funds which are affected by said correction and the proceedings to be reported to the board of supervisors.

CODE OF IOWA, 1897, SEC. 1387.

TAX LIST DELIVERED.—He (County Auditor) shall make an entry upon the tax list showing what it is, for what county and year, and deliver it to the county treasurer on or before the thirty-first day of December, taking his receipt therefor; and such list shall be a sufficient authority for the treasurer to collect the taxes therein levied. But no informality therein, and no delay in delivering the same after the time above specified, shall affect the validity of any taxes, sales, or other proceedings for the collection of such taxes.

CODE OF IOWA, 1897, SEC. 1390.

TREASURER TO COLLECT.—The treasurer, after making the entry, shall proceed to collect the taxes, and the list shall be his authority and justification against any illegality in the proceedings prior to receiving the list; and he is also authorized and required to collect, as far as practicable, the taxes remaining unpaid on the tax books of previous years.

CODE OF IOWA, 1897, SEC. 1396.

INFORMATION AS TO TAXES DUE.—The treasurer, when applied to by letter and receiving thirty cents in postage stamps or money, and ten cents additional for each tract of one

hundred and sixty acres in excess of three hundred and twenty acres, in no case to exceed fifty cents, shall correctly answer the same by mail, giving the amount and interest of unpaid taxes and of any tax sales thereof as the same appear upon the tax list in his office, and upon the return of the letter or a copy, before the last day of the current month, with the demand due as shown therein, he shall pay the taxes and forward to the sender a tax receipt without further charge.

CODE OF IOWA, 1897, SEC. 1397.

PENALTY.—Any treasurer who shall neglect for twenty days after the receipt of any such letter, with money or stamps inclosed as aforesaid, to answer the same fully as required in the preceding section, or who shall directly or indirectly receive or be concerned in receiving any greater compensation for the service mentioned than as above provided, shall forfeit to the person aggrieved, for each offense, the sum of fifty dollars, which may be recovered in a civil action.

CODE OF IOWA, 1897.
(Code of 1927, Sec. 7235.)

SECTION 1417. REFUNDING ERRONEOUS TAX.—The board of supervisors shall direct the treasurer to refund to the taxpayer any tax or portion thereof found to have been erroneously or illegally exacted or paid, with all interest and costs actually paid thereon. In case any real estate subject to taxation shall be sold for the payment of such erroneous tax, interest or costs, the error or irregularity in the tax may be corrected at any time provided in this chapter but such correction shall not affect the validity of the sale or the right or title conveyed by a treasurer's deed, if the property was subject to taxation for any of the purposes for

which any portion of the taxes for which the land was sold was levied, and the taxes were not paid before the sale, or the property redeemed from sale.

(LAWS OF THE THIRTY-SEVENTH GENERAL ASSEMBLY.)

CHAPTER 343.

TAXATION.

SECTION 1. Rate of taxation—adjusted taxable value. That hereafter in all taxing districts in the state, including townships, school districts, cities, towns and counties, when by law then existing the people are authorized to determine by vote, or officers are authorized to estimate or determine, a rate of taxation required for any public purpose, such rate shall in all cases be estimated and based upon the adjusted taxable valuation of such taxing district for the preceding calendar year.

SECTION 2. Amounts certified in dollars, not by rate. That when any authorized tax rate within any taxing district of the state, including townships, school districts, cities, towns and counties, shall have been thus determined as provided by law, the officer or officers charged with the duty of certifying said authorized rate to the county auditor or board of supervisors, shall, before certifying the same, compute upon the adjusted taxable valuation of such taxing district for the preceding calendar year (not including moneys and credits and other moneyed capital taxed at a flat rate, as provided in section thirteen hundred ten (1310) supplement to the code, 1913), the amount of tax said rate will raise, stated in dollars, and shall certify said computed amount in dollars, and not by rate, to the county auditor and board of supervisors.

SECTION 3. Computation of rate. When the valuations for the several taxing districts shall have been adjusted by the several boards, as provided by law, for the current year, the county auditor shall thereupon compute and spread upon the records such a rate, not exceeding the rate authorized by law, on said adjusted taxable valuations for the current year (not including moneys and credits and other moneyed capital, taxed at a flat rate, as provided in section thirteen hundred ten (1910), supplement to the code, 1913) as shall raise the amount required for each taxing district within the county, as theretofore determined under the provisions of this act, and no larger amount; provided, however, that if in adjusting the rate to be levied in any taxing district to conform to this act, such rate shall make necessary the levying of a fraction of a mill in excess of one-half of one-tenth of a mill, said fractional excess may be computed as one-tenth of a mill, which latter shall be the smallest required to be spread upon the tax lists for any purpose except rates applicable to state purpose, provided, however, that nothing herein shall be construed as interfering with the right of any taxing district to receive its due proportion of the taxes on moneys and credits and other moneyed capital taxed at a flat rate as provided in section thirteen hundred ten (1310), supplement to the code, 1913.

SECTION 4. Record of rates. On the determination by the auditor of the necessary rates as herein directed, it is made his duty to enter a record of such rates for each taxing district upon the permanent records of his office in a book to be kept for that purpose.